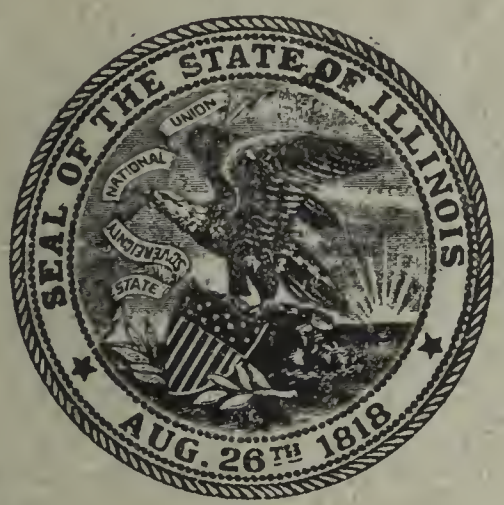
NOTES ON

BILL DRAFTING

IN ILLINOIS



Compiled and Published by the

LEGISLATIVE REFERENCE BUREAU

Springfield, Illinois

1920

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SCHNEPP & BARNES, PRINTERS
SPRINGFIELD, ILL.
1920.

43331—1,500

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PREFACE.

This study has been prepared by DeWitt Billman. It was undertaken at the suggestion of W. F. Dodd who made many valuable suggestions.

It is hoped that this pamphlet will be of assistance to members of the General Assembly and others who have occasion to draft legislative measures in Illinois.

In addition to the books listed in the bibliography, two publications of the Legislative Reference Bureau, *Constitutional Conventions in Illinois,* and *Constitution of the State of Illinois, Annotated,* have been consulted on questions of constitutional law.

LEGISLATIVE REFERENCE BUREAU.
E. J. VERLIE, *Secretary.*

Springfield, Illinois,
December, 1920.

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THE PROBLEM OF CONSTRUCTING A STATUTE.

The discussion in the following chapters is limited to what has been called the "mechanics of law making." However, in this preliminary chapter it may be useful to consider briefly the several steps in the construction of a bill for introduction in the General Assembly.

In a general way, the process of constructing a statute may be divided into three parts:

1. The conception of the legal principle to be embodied into law;
2. The selection of machinery or legislative expedients to apply and make effective the legal principle; and
3. The reduction of the substance to words so as to convey to the mind of the reader the legal principles which were present in the mind of the legislator.

Legislation consists at the present time in remedying evils and making improvements in the body of the law, both statutory and common law. Thus, by the common law, the recovery of damages for a personal injury suffered by an employe during his employment depends on the principles of civil wrongs. The legislature determines that recovery in such cases should not depend on the law of negligence, contributory negligence, fellow-servant rule, risk of the employment, etc., but that there should be a scheme of compensation for all injuries incurred in the course of employment, and the change is the basis of a Workmen's Compensation Act. So an act legal at common law may be declared an offense by statute. The common law right of the employer to contract has been restricted by child labor laws and other statutory regulations affecting the hours and conditions of labor.

As to the conception of the evil existing or improvement to be made, this is purely the legislative function. It may be suggested to the mind of the legislator by his own experience, or by suggestion from the experience or investigations of others, but from the standpoint of the making of legislation, it emanates from the mind of the legislator.

The legislature possesses all legislative power that is not expressly or impliedly withheld by the constitution of the state, or by the constitution of the United States. In connection, then, with the conception of the legal principle must be determined whether the enactment of that principle is within the limits of the power reposed in the legislature. The courts are, it is true, the ultimate interpreters of the constitution, and the final arbiters as to the va-

lidity of laws enacted by the legislature. But members of the General Assembly are sworn to uphold and defend the constitution of the state and of the United States, and certainly are under a duty not to enact laws plainly opposed to fundamental constitutional principles. This is not to say that the legislature should always refuse to pass a measure deemed for the public welfare because it may be of doubtful validity or because, tested by some decision of the Supreme Court, it may later be declared void by that court. The history of legislation in Illinois limiting hours of labor for women is in point. The act of 1893 which prohibited the employment of a female for more than eight hours in any one day in certain businesses was declared unconstitutional by the court.[1] One objection made to the act was that it made an improper classification and discriminated against employers and employes in certain businesses. But the act is also condemned because it is an "attempt to abridge unreasonably the right to make contracts." In the language of the court, "it substitutes the judgment of the legislature for the judgment of the employer and employe in a matter about which they are competent to agree with each other. It assumes to dictate to what extent the capacity to labor may be exercised by the employe, and takes away the right of private judgment as to the amount and duration of the labor to be put forth in a specified period." To the contention that the act should be sustained "as an exercise of the police power upon the alleged ground that it is designed to protect woman on account of her sex and physique," the court replies that as a "citizen" and "person", woman "is entitled to the same rights, under the constitution, to make contracts with reference to her labor as are secured thereby to men. . . . The police power of the State can only be permitted to limit or abridge such a fundamental right as the right to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare or safety of society or the public; and it is questionable whether it can be exercised to prevent injury to the individual engaged in a particular calling."

It would seem that such language as this would preclude any legislation limiting the hours of labor for women, but fourteen years after this decision, the General Assembly enacted a law prohibiting the employment of females in any mechanical establishment or factory or laundry for more than ten hours in any one day, and this statute was declared valid by the Supreme Court.[2]

Under the constitution, the cost of paving streets may be paid by special assessments, but not the cost of sprinkling streets.[3] Suppose the General Assembly deems it advantageous to permit the oiling of streets by special assessment. Only a judicial decision can determine whether such a measure is valid or not. The General Assembly, recognizing the constitutional question involved, may properly enact

[1] Ritchie v. People, 155 Ill. 98 (1895).
[2] Ritchie & Co. v. Wayman, 244 Ill. 509 (1910); also People v. Elerding, 254 Ill. 579 (1912).
[3] City of Chicago v. Blair, 149 Ill. 310 (1894).

the law and leave to the court the final determination of its validity. On the other hand, the legislature is clearly under a duty not to enact laws plainly violative of the fundamental law and throw upon the courts and litigants the burden of erasing acts from the statute book.

The second step in the construction of a bill is the selection of the legislative expedients that carry into effect the legal principle. The creation of commissions and agencies to administer the law; the fixing of criminal penalties and civil liabilities; the requirement of oaths, bonds, etc., are statutory devices adopted to accomplish the desired end. For example, in the Workman's Compensation Act the legal principle is a system of compensation for all injuries incurred during the course of employment, without regard to proximate cause. The questions of employment, extent of the injury, etc., might have been referred to the courts, but since it was thought that most justiciable questions connected with such claims had been eliminated, a board was created with examiners to determine all such matters.[4] The Industrial Commission with its system of hearings and procedure constitutes the statutory expedients of this act.

Again constitutional limitations on the power of the legislature must be observed in connection with the ways and means of making effective the legal principle. The provision that "no person shall be deprived of life, liberty or property without due process of law,"[5] is a procedural requirement as well as a test of the substance of legislation. Not only must the object to be attained by a statute be a proper one for legislative enactment, but the methods of accomplishment must be within the constitutional limitations which safeguard the rights of the individual. Thus, some method may be desirable to compel witnesses to attend and give evidence before a notary public. A statute, however, that attempts to authorize a court to punish in a summary way as for contempt the refusal to obey a notary's subpoena violates the right to trial by jury.[6] But the statute may authorize the officer to apply for an order from the court directing the witness to attend and testify, and failure to obey the court's order may be punished as contempt.[7]

The first two steps in constructing a bill—the conception of the legal principle and the adoption of means to make it effective—relate to the substance of legislation. The third step—the reduction of the substance to appropriate language to express the legislative will—is concerned with matters of form. Let us consider the work of the bill-drafter in connection with the several steps in making a bill. It is clear that the actual drafting can be done with advantage for the legislator by persons skilled in legislative expression and forms best adapted to accomplish the desired ends. The aid rendered the

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[4] The submission to the courts of controversial matters arising under a workmen's Compensation act was unsatisfactory because it involved a great deal of administrative detail.

[5] Constitution of 1870, Article II Section 2.

[6] Puterbaugh v. Smith, 131 Ill. 199 (1890); McIntyre v. People, 227 Ill. 26 (1907).

[7] People v. Rushworth, 294 Ill. 455 (1920).

See Chapter on Forms, subheading Provisions authorizing hearings, compelling obedience to subpoenas and extending immunity.

legislator may, however, extend farther than the mere drafting. The selection of legislative expedients is largely a matter of research, the collection of data, reference to existing legislation in this and other jurisdictions, combined with a resourcefulness and imagination to project a theory into different situations and contingencies "and to foresee whether and how a paper scheme will work out in practice."[8] A legal training and an acquaintance with the history of legislation are essential. For example, in 1905 the divorce law was amended to prohibit the remarriage of either party within one year.[9] The expedients adopted to enforce the provision are two: (1) a penalty provision for violation of the prohibition; and (2) marriage within that period is invalidated. Ordinarily to attach a penalty of imprisonment and to render ineffective the thing attempted to be done, would be sufficient to secure compliance with the provisions and enforce the prohibition.

In the statute in question there is no express provision that a marriage by a divorced person within one year performed in another state is invalid. The general rule is that marriages valid where performed are valid everywhere unless contrary to morality and the laws of nature. Statutes are not presumed to have extra-territorial effect unless that intent plainly appears. Clearly a reasonable construction of the words themselves would be to limit their application to marriages within the jurisdiction of the state. But to give such a construction to the statute in question renders it utterly ineffective since all that would be necessary for a divorced person to evade the provisions of the act and escape the penalty would be to marry beyond the limits of the state. The Supreme Court, appreciating this fact, refused to recognize marriages in another state of divorced residents of this state who left this state merely for the purpose of evading the provisions of this act.[10] "To say that the legislature intended such a law to apply only while the parties are within the boundaries of the state, and that it contemplated that by crossing the state line its citizens could successfully nullify its terms, is to make the act essentially useless and impotent and ascribe practical imbecility to the law-making power." In effect, then, the court, by construction, adds an additional expedient—invalidating a foreign marriage—in order to make effective the legislative policy.

What is the practical operation of the statute with its extended construction? In the first place, one unfortunate result is that two persons may be legally regarded as married in one state and unmarried in another. Certainly, from the standpoint of morality, there should be no such lack of uniformity in various jurisdictions as to the marriage status. Then it offers an opportunity for fraud and deception, absolving the guilty party and punishing the innocent one. Let us go one step further. The Supreme Court says that it is "intended to control the conduct of the residents of the State, whether they be within or outside of its boundaries." Presumably, the statute

[8] Ilbert, The Mechanics of Law Making, p. 110.
[9] Hurd 1919 p. 1119.
[10] Wilson v. Cook, 256 Ill. 460 (1912).

would not be construed to invalidate the remarriage within one year in another state of a resident of Illinois who leaves this state and in good faith takes up a residence in the other state. In other words, whether that marriage is valid in Illinois depends not on facts and the acts of the parties thereto, but rather on their intent. The evil of this result is obvious.

Let us see what other method might have been adopted to accomplish the desired object without the disadvantage of the present statute. The leading principle is the prohibition of the marriage of divorced persons within one year. Provision might easily be made for an interlocutory decree which would become final at the end of one year. Remarriage in that case is made impossible not only in Illinois, but in every state and the legal status of two persons who have had a ceremony of marriage performed is uniform wherever they may be. In every state, too, the performance of a marriage ceremony within the limit of one year would be punishable as bigamy by the law of the particular state.

It might be difficult in the case of the provision concerning re-marriage of divorced persons to gauge beforehand the practicability of the method adopted and to foresee all the consequences and opportunities for evasion. But the difficulty here involved and all similar statutory problems evidence the advantage of expert aid in selecting methods to carry out the legislative policy. Even if it is not possible to foresee the practical operation of a legislative experiment it is at least possible when that experiment has been tried in one state, to collect information and observations as to its desirability and to give the legislator the benefit of such information.

Let us return briefly to the first step in constructing a bill—the conception of the leading principle. If legislation consists in amending or changing the legal situation in some respect, the conception of the leading principle of a bill must be based on an adequate knowledge of the present status of the law. The legislator cannot, of course, have a legal knowledge which embraces the complete body of law and legal assistance at this point can be rendered to advantage. Information collected and prepared by investigating commissions, departments of government and other bodies who have conducted inquiries in specialized fields may also be furnished the legislator.

Mention has been made of constitutional limitations affecting both the main purpose of a measure and the methods by which it is to be accomplished. The importance from a legislative standpoint of knowing the constitutional situation as it affects a measure has already been stated. Members of the General Assembly come from all walks of life. Many are lawyers, but the practice of the average lawyer does not lie within the field of constitutional law. The Governor in his capacity as a part of the law-making power, customarily has the advice of the Attorney General as to the constitutionality of measures passed by the General Assembly. It would seem that legal advice on these constitutional matters should

be at the disposal of members of the legislature. Some legislative reference bureaus, notably the one in Wisconsin, make no attempt to advise as to constitutional questions. In the legislative reference bureau in Illinois, however, it has been considered a part of the duty of the bill-drafter to consider constitutional questions in connection with a proposed measure and to acquaint the legislator with possible objections. That having been done, the bill, if desired, is drafted regardless of possible invalidity.

It is apparent that, aside from the actual drafting of bills, the aid furnished legislators by persons with special training and experience in legislative methods may extend into every step in the construction of a bill. The notes and suggestions here collected are limited, however, to the discussion of statutory form. That this is no unimportant part of legislation is evidenced by the statements of many jurists and students of the science of legislation. In an address before the American Bar Association, Judge William Schofield said: "To draw a statute modifying the common law in such language as to effect exactly the result intended is one of the most difficult achievements of legal skill." And John Austin, the well-known writer on Jurisprudence, and the man largely responsible for the form of modern English Statutes, said: "I will venture to affirm that what is commonly called the *technical* part of legislation is infinitely more difficult than what may be called the *ethical*. In other words, it is far easier to conceive justly what would be useful law, than so to construct that same law that it may accomplish the design of the law-giver."

It is to this limited but important part of the bill-drafter's work that this discussion is directed. Constitutional questions have been mentioned only as they relate to the form of statutes. Even in this field it is not hoped to make a complete treatment of the subject but only to call attention to the most glaring faults in Illinois statutes. Frequent reference by way of illustration has been made to the laws of this state but it must not be concluded that they are uniformly poor in the matter of form. There is much that is excellent in the work of Illinois legislators as is instanced by this commendation of one act by the Supreme Court.

"The elements which go to make up the offense created by this section of the statute are so plainly and concisely expressed, that it would be useless to attempt to make any change in the language used, with the hope of presenting them in a more concise or perspicuous form. Indeed, the section, in both respects, may be regarded as a specimen of model legislation."[11]

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[11] Henderson v. People, 124 Ill. 607 at 612 (1888).

TITLE AND SINGLENESS OF SUBJECT.

Subject: Section 13 of Article IV of the constitution provides that "No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed." This requirement which is one of the most important of those relating to the form of legislation, occurs in substance in many of the state constitutions. Any discussion of the titles to statutes and unity of subject is necessarily largely devoted to the question of conformity to this provision. There are three separate instructions; the first two are in the nature of charges to the General Assembly (1) that each act shall be limited to a single subject and (2) that the title shall express the subject. The third instruction is a rule of construction for the court if the second charge is disregarded and the title fails to express all that the act embraces. The first two instructions are rules for bill drafting but the third is not.

Although the first two parts of the constitutional provision are distinct, a provision in a statute may be objectionable to both. For example, if a general title expresses the subject of an act, but it is claimed that some provision in the act is so disconnected from the subject that it should not have been included in the act, it naturally would follow that the title would not express the matter pertaining to another subject. As a matter of fact there are but few cases in which the court has considered the limitation relating to subject apart from the provision as to title.

"Subject" as used in the prohibition against more than one subject in a statute, has no mathematically precise meaning nor can it be defined exactly. The provision was designed to prevent "log-rolling" legislation and the court mindful of the evil aimed at, has held that it should not be construed to restrict the scope of an act provided the act deals with one general subject.[12] That is to say, an act may be comprehensive, covering a very general subject and that generality will not render it objectionable. "The General Assembly must determine for itself how broad and comprehensive shall be the object of the statute. . . ."[13] Indeed, the court has commended the legislative policy of incorporating in a single act the entire body of statutory law upon a general subject rather than to divide it into a number of separate acts. Such broad, compre-

[12] Rouse vs. Thompson, 228 Ill. 522 (1907).

[13] Sutter v. People's Gas Light Co., 284 Ill. 634 (1918).

hensive acts as Township Organization, Incorporation of Cities, Villages and Towns, the Criminal Code, the Revenue Law and the Practice Act have been mentioned favorably by the court as illustrations of this policy.[14]

The prohibition against duplicity of subjects is directed, rather, against the joining into one measure of incongruous and unrelated matters. Whether there is a logical connection and relation between the matters treated is the test as to unity of subject rather than the extent and scope of the act. "The word 'subject' as used in the constitution signifies the matter or thing forming the groundwork. It may contain many parts which grow out of it and are germane to it, and which, if traced back, will lead the mind to it as the generic head. Any matter or thing which may reasonably be said to be subservient to the general subject or purpose will be germane and may be properly included in the law."[15]

The word "germane" has been frequently employed by the court in discussing the connection or relationship of provisions to a subject. This term is considered at some length by the court in condemning an act which authorized the city of Chicago to sell surplus electricity and to fix the rates for the sale in Chicago of gas and electricity by individuals and companies.[16]

"In considering whether all the particular provisions of an act are embraced in a single subject the word 'germane' has been a favorite one with the courts, . . . Literally, 'germane' means 'akin', 'closely allied.' It is only applicable to persons who are united to each other by the common tie of blood or marriage. When applied to inanimate things, it is, of course, used in a metaphorical sense, but still the idea of a common tie is always present. Thus, when properly applied to a legislative provision, the common tie is found in the tendency of the provision to promote the object and purpose of the act to which it belongs. Any provision not having this tendency which introduces new subject matter into the act is clearly obnoxious to the constitutional provision in question. It is an error to suppose that two things are, in a legal sense, germane to each other merely because there is a resemblance between them or because they have some characteristics common to them both."

A statute combining all the law concerning a broad, general subject will embrace matters which considered individually are unrelated to each other but all of which are germane to the general subject. If, for instance, two diverse matters from the criminal code were placed in an act which covered nothing else there would be an improper combination of two minor, specific subjects. But the Criminal Code may collect those two and many others and unity follows from their relationship to the one general subject, criminal jurisprudence.

To the general rule that any matter or thing may be properly included in an act if it is germane to the subject, one exception

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[14] Sutter v. People's Gas Light Co., 284 Ill. 634 (1918).
[15] People v. Sargent, 254 Ill. 514 (1912).
[16] Sutter v. People's Gas Light Co., 284 Ill. 634 (1918).

must be noted. This exception is created by Section 16 of Article IV of the constitution which says: "Bills making appropriations for the pay of members and officers of the General Assembly, and for the salaries of the officers of the government shall contain no provision on any other subject." By express terms these appropriations are made an independent subject of legislation. An act creating free employment agencies cannot contain an appropriation for the salaries of the superintendents of these agencies.[17] An appropriation act cannot make appropriations for both the ordinary and contingent expenses of the goverment and the salaries of state officers.[18]

The rule laid down by this section of the constitution is quite clear; its application, however, is not always easy because of the difficulty of drawing a line between officers and employes. "Office" is defined in Article V, section 24 of the constitution as "a public position, created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor elected or appointed," and "employment" is defined as "an agency for a temporary purpose, which ceases when that purpose is accomplished." To this definition the court has added little. In the case of Fergus v. Russel,[19] the court discusses what constitutes creation of an office by law. "An office is created by law only as a result of an act passed for that purpose. The mere appropriation by the General Assembly of money for the payment of compensation to the incumbent of a specified position does not have the effect of creating an office or of giving such incumbent the character of an officer . . ."[20]

Title: Of the two provisions, one relating to the subject and the other to the title of statutes, the second has caused the greater difficulty. Like the subject restriction, this provision is not precise and definite. There is no sharp line dividing titles which express the subject and those which do not and since a title can not inventory all the provisions of an act, the titles to many acts have been attacked since this provision was incorporated in the constitution of 1870. As Justice Craig expresses it; "The objection that a statute includes matters which are not expressed in the title of the act is one which is frequently urged and seldom sustained. The reason for this is that they are usually frivolous and without merit."[21] In spite of the fact that this provision has been considered in numerous decisions by the Supreme Court, it is not possible to lay down absolute rules by which it may be determined whether or not a title sufficiently expresses the subject of an act. The

[17] Mathews v. People, 202 Ill. 389 (1903).

[18] Fergus v. Russel, 270 Ill. 304 (1915).

[19] 270 Ill. 304 (1915).

[20] For a discussion of the cases, see Constitution of the State of Illinois, Annotated, pp. 99, 147.

[21] People v. Stokes, 281 Ill. 159 (1917).

cases will serve to show the purpose of this provision and, in a general way, the construction placed upon it.

"The object of the constitutional provision," the court says, "was not to hinder legislation or require that the title of an act should be an index to the subject matter which followed and minutely and exactly express every related matter which was included in the act, but, on the contrary, was intended to require the title of the act to express in general terms the objects and purposes of the act, so as to prevent surprise or fraud by the insertion of provisions into the act of which the title gave no intimation, and to apprise the people, through the usual course of publication of legislative proceedings, of the subject matters of legislation being considered." [22]

The court, continuing, states the two methods by which a title may express the subject: "This may be done either by expressing in the title in a brief, general statement the objects and purposes of the act, or by so framing the title as to express the principal features of the act more in detail. Either method adopted will answer the requirements of the constitution so long as the general subject matter of the legislation is fairly indicated."

Of the two kinds of titles, one merely indicating in general terms the subject of the act and the other in the nature of a table of contents of the principal features, the first is to be preferred.[23] The court has said that either form is a compliance with the constitutional provision and that it is for the General Assembly to determine with what particularity the title shall express the subject.[24] At the same time, the court has indicated that it favors simple, general titles rather than complex and restrictive ones. The Motor Vehicle Act of 1911 was entitled, "An Act defining motor vehicles and providing for the registration of the same and of motor bicycles, and uniform rules regulating the use and speed thereof; prohibiting the use of motor vehicles without the consent of the owner and the offer or acceptance of any bonus or discount or other consideration for the purchase of supplies or parts for any such motor vehicle or for work or repairs done thereon by others; and defining chauffeurs and providing for the examination and licensing thereof, and to repeal certain acts therein named."[25] The court held as to this title that the "mere mentioning in the title of related particulars is not stating a plurality of subjects," but it remarks that "the subject is expressed, perhaps, with unnecessary particularity in the title." For a general title, the court suggests, "An Act in relation to motor vehicles and to repeal certain acts therein named."[26] A revision of the motor vehicle law was enacted in 1919, which follows the court's suggestion by adopting substantially the brief general title.[27]

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[22] People v. Stokes, 281 Ill. 159 (1917).
[23] See Chapter on Forms, subheading, Titles to independent bills.
[24] People v. Nelson, 133 Ill. 565 (1890).
[25] Laws, 1911, p. 487.
[26] People v. Sargent, 254 Ill. 514 (1912).
[27] Hurd, 1919, p. 2620.

There are several objections to the table-of-contents title which it may be worth while to mention. In the first place, the expression of details in the title of an act limits the subject, for when the title is limited to one particular only of some general subject, the body of the act must be limited to the particular or special subject in the title and to matters properly connected therewith and the act cannot deal with other particulars of the general subject. A recent decision of the Supreme Court will illustrate this rule. The Deadly Weapon Act of 1881[28] was entitled "An Act to regulate the traffic in deadly weapons and to prevent the sale of them to minors." This title lists two principal provisions of the act but it does not mention any regulation or restriction as to carrying concealed weapons. Nor is this third provision suggested by the two which do appear in the title. "All human activities, however diverse or concerning different subjects, are in some remote sense related to each other, but the constitutional provision requires that there must be some reasonable relation between a provision and the subject expressed in the title . . ." The provision relating to carrying concealed weapons was held void when it might well have been included in the act under a general title which merely directed attention to the subject of deadly weapons.[29]

Another objection to the detailed title is, that while it may successfully list all the features of the act as originally passed, if it is desired to add other provisions later, it is necessary to amend the title also to include mention of the additional matter. The inconvenience of long, unwieldy titles is a still further objection. With a simple concise title, also, the purpose of the act stands out more clearly.

When the purpose of a statute and the general subject are disclosed by the title, the courts uniformly hold that such a title covers all matters having any reasonable connection with that general subject. "When a general purpose is declared, the means by which to accomplish that purpose are presumed to be intended as necessary incidents. Any means which are reasonably adapted to secure the object indicated in the title may be included in the act. If by any fair intendment the provisions in the body of the act have a necessary or proper connection with the title it is not objectionable. To render a provision in the body of an act void, as not embraced in the title, such provision must be incongruous with the title or must have no proper connection with or relation to the title. If all the provisions of an act relate to one subject indicated in the title, and are parts of it or incident to it or reasonably connected with it or in some reasonable sense auxiliary to the object in view, then the provision of the constitution is obeyed. An act may contain many provisions and details for the accomplishment of a legislative purpose, and if they legitimately tend to effectuate that object the act is not contrary to the constitutional provision."[30]

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[28] Laws, 1881, p. 73.

[29] People v. Horan, 293 Ill. 314 (1920).

[30] People v. Huff, 249 Ill. 164 (1911), and cases there cited.

In nearly every instance where a title has been held not to express the subject of an act, the objection has been that it was too restricted. Instead of expressing the general subject, it pointed out only a portion of it. Of course, a title can be made so general as to be meaningless. Though a title need only express the general subject, it should indicate fairly that subject and afford an intimation of the true nature of the measure. "While it may be a general expression of the subject, it must be specific enough to accomplish the purpose for which the subject is required to be expressed in the title . . . . The title will sufficiently conform to the command of the constitution if it be so framed and worded, as fairly to apprise the legislators, and the public in general, of the subject matter of the legislation, so as to reasonably lead to an inquiry into the body of the bill. The constitutional requirement may be interpreted to mean that the act and its title must correspond,—not literally, but substantially; and such correspondence is to be determined in view of the subject matter to which the legislation relates."[31] That is to say, a title may be broader than the act in the sense that the body of the act need not legislate respecting all the matters which might be included under the title, but the title must not be so general as to be misleading and, in effect, conceal the subject of the statute rather than express it.

Since an expression in the title of the general subject and purpose is sufficient without reciting the means by which it is to be accomplished, it is unnecessary to include such phrases as "providing for its enforcement", and "providing penalties for violation."[32] Nor is it necessary to recite in the title "and to repeal a certain act therein named" when the repeal of the act is germane to the subject of the second act and auxiliary to the general purpose expressed.[33] Mention of a referendum provision need not be made in the title since this is a means connected with its execution;[34] nor is it necessary to refer to an emergency provision. Expressions such as "et cetera," "and so forth" and "for other purposes" have been held in nearly all states not to add to the title of an act or to extend its meaning and the use of such phrases should be condemned.

A provision appropriating money in an act as a means of accomplishing the object of the measure is so clearly germane to the general purpose that, from a constitutional standpoint, the appropriation need not be expressly mentioned in the title. However, this much may be said for its inclusion in the title,—the expenditure of

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[31] Milne v. People, 224 Ill. 125 (1906). In this case, the court held unconstitutional an act of 1905, entitled "An act for the punishment of crimes against children." The act made it a felony to take indecent liberties with a child. In the view of the court the title does not express the fact that the act creates a new crime of a particular nature. "One reading this title would have no conception of what might be expected in the body of the act." It is well to note in connection with the holding in this case that the usual method of drafting an act of this nature is in the form of an amendment to the criminal code. If that had been done, the title would have been "An act to amend 'An act to revise the law in relation to criminal jurisprudence.'" This title would necessarily be held valid and yet it affords far less indication of the nature of the act than the title held bad.

[32] People v. Blue Mountain Joe, 129 Ill. 370 (1889); Cohn v. People, 149 Ill. 486 (1894).

[33] Timm v. Harrison, 109 Ill. 593 (1884).

[34] City of Virden v. Allan, 107 Ill. 505 (1883).

the public money is regarded as a matter of considerable importance and it may be desirable to have the title call attention to this feature. The act assembling the constitutional convention[35] is one of the few laws carrying appropriations which do not make mention of that provision in the title.

The preceding discussion of titles refers more particularly to independent legislation. The constitutional provision as to expressing the subject in the title applies also to amendatory acts.[36] It has been held that if the provisions of the amending statute are germane to the subject expressed in the title of the act amended, the title of the amending act sufficiently expresses its subject by referring to the act amended and declaring the purpose to amend or supplement it.[37] The title of an amendatory act is not expressive of the subject if the act contains provisions which could not properly have been inserted in the original act under its title.[38]

If, however, the title of the amendatory act declares a purpose to amend certain sections of an earlier act, the body of the amending act must be limited to the subject of the sections named.[39] This rule is important for two reasons: First, the titles of a majority of amendatory acts refer to the sections amended; and second, it is often difficult to determine whether the section as amended is germane to the subject of the original sections. In case of doubt, the title of the amending act should be made to refer generally to the original act rather than to particular sections.

When it is desired to amend an act by provisions which are not within the title but which might properly have been included in the original act under a more general title, the amendatory act must contain a provision amending the original title.[40] The purpose of an amendatory statute is to deal with the subject expressed in the title of the act amended. If, therefore, that subject is expanded by amending the title of the original act, then the title of the subsequent act should afford some indication of the expanded subject. This can be expressed by noting in the title of the second act the fact that the original title is amended.

The court when it has been able to ascertain the legislative intent has given effect to several amendatory acts which did not correctly name the act to be amended. Thus, an act purporting to amend "the Criminal Code" was held to refer to "An Act to revise the law in relation to criminal jurisprudence."[41] Another statute which was sustained named the prior act correctly but gave to the particular sections amended the numbering as it appeared in Hurd's Revised Statutes.[42] As these cases indicate, the court will endeavor to effect the legislative intent but such errors should not be permitted to jeopardize the validity of meritorious legislation. The titles of acts

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[35] Laws 1919, p. 60.
[36] See Chapter on Forms, subheading, amendatory bills.
[37] Gage v. City of Chicago, 203 Ill. 26 (1903).
[38] Kennedy v. Le Moyne, 188 Ill. 255 (1900).
[39] Dolese v. Pierce, 124 Ill. 140 (1888).
[40] People v. City of Chicago, 256 Ill. 558 (1912).
[41] People v. Van Bever, 248 Ill. 136 (1911).
[42] Patton v. People, 229 Ill. 512 (1907).

referred to should be correctly stated, together with the dates of approval (or of filing, if the act was not approved) and going into effect.[43] If there have been prior amendments, this fact should be indicated by adding the words, "as amended," after the dates.[44] In the case of an act, the title of which has previously been amended, the reference should be to the act by its amended title but with the dates of approval and in effect, of the original act. The act is the same act and the two dates remain the same even if the law, at some subsequent time, is given a different title. Of course, the fact that the act has been amended should be disclosed by the words, "as amended."

Frequently after the first draft has been made of a bill, changes will be made, sometimes at the suggestion of the legislator for whom it has been prepared. In every instance the title of the bill should be checked to see whether it is broad enough to cover the changes made. This observation applies equally to amendments to bills after they have been introduced in the General Assembly.[45] The necessity of care in this regard cannot be emphasized too strongly because a serious defect in the title may easily creep in and be overlooked.

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[43] In most cases, the date of approval would be sufficient to identify the act, but the use of both dates has been customary.

[44] From a constitutional standpoint, the reference to an act to be amended is sufficient without the words "as amended" to call attention to prior amendments. But this phrase should not, for that reason, be omitted. It serves the useful purpose of informing the reader that the reference is not to the original act but to the act in its present form.

[45] See Chapter on Forms, subheading, Amendments to bills.

WHEN LAWS TAKE EFFECT.

The constitution of Illinois fixes the time when acts of the General Assembly shall become effective. Section 13 of Article IV reads in part as follows: "And no act of the General Assembly shall take effect until the first day of July next after its passage, unless, in case of emergency (which emergency shall be expressed in the preamble or body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct." This language presents some difficulties in the case of legislation passed by the General Assembly less than ten days before July 1, so that the period of time allowed for consideration of measures by the Governor, extends past July 1.[46] But this is a matter of construction which does not affect the drafting of measures.

In the case of some measures, it is desirable to delay the time of becoming operative until a date later than July 1. Thus, the Public Utilities Act of 1913 and the Motor Vehicle Law of 1919, by provisions to that effect, were not in force until January 1 following their passage. Many of the licensing acts read, "After October 1, 1919, it shall be unlawful etc." Technically, a measure with a provision of this character becomes a law July 1 even though its provisions do not become operative at this date. There would seem to be no constitutional objection to suspendng the operation of a law for a period after July 1. Clearly the purpose of the provision in the constitution was to place certain restrictions on laws which take effect earlier than the time fixed but not to limit or restrict legislation which becomes effective at a later date. Consequently to delay the actual taking effect of an act, it is sufficient to declare that it shall go into effect at a later time.[47]

For an act to become effective earlier than July 1, two things are necessary, first there must be an emergency (which is expressed in the act) and the act must receive a two-thirds vote of all members elected to each house. The declaration of the emergency is commonly called the emergency clause. Probably the framers of the constitution intended by this language to require a statement of the nature of the emergency in the act[48] and a considerable number of emergency clauses give a short statement of the

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[46] See discussion, Constitution of the State of Illinois, Annotated, p. 96.

[47] See Chapter on Forms, subheading, Take effect clause.

[48] Mr. Vandeventer, the only delegate to the constitutional convention of 1870 who discusses the question, was of the opinion that the provision would require the nature of the emergency to be clearly defined in the act. Debates, Volume 1, p. 540.

situation which is deemed to require immediate legislation. In view of the fact, however, that the court has expressly declared that the legislature is the sole judge of the existence and nature of the emergency and that the decision of the law making body in that regard will not be reviewed,[49] the emergency is customarily expressed by a statement to the effect that there is an emergency.

The most common emergency clause found in the statute-book is in a resolution form of statement: "Whereas, an emergency exists, therefore this act shall be in full force and effect from and after its passage and approval." This is somewhat awkward in carefully drafted measures and after examining emergency clauses in use in other states, the following is suggested as adequate and more simple: "Because of an emergency, this act shall take effect upon its passage."

The court suggested in an early case, that the emergency provision should be embodied in a separate and distinct clause.[50] Usually this clause is made a separate section. The position of the emergency clause in the bill has been considered in the following chapter, "Arrangement of subject matter."

[49] Wheeler v. Chubbuck, 16 Ill. 361, (1855).
[50] Wheeler v. Chubbuck, 16 Ill. 361, (1855).

ARRANGEMENT OF SUBJECT MATTER.

It is a matter of some importance in the case of lengthy and complex bills that the subject matter be arranged so as to present the substance in the clearest and easiest manner to the reader. This result will be best secured by the careful presentation of that substance in a logical and orderly development. It must be remembered that since legislation presents a widely varying mass of provisions, no set pattern can be made to which all bills can be constructed to fit. Nor can there be any set order of provisions for every bill. The rules laid down here are more in the nature of suggestions to be adopted, amended or discarded as convenience may require. But it is hoped by an analysis of the skeleton or structure of a bill to arrive at some suggestions as to the most effective arrangement of the material.

A statute is composed of a series of provisions or enactments. A provision may express the leading principle of the measure or some proposition subordinate to that leading principle; or it may be one of a number of equal provisions all connected as to subject matter but each independent. From the standpoint of the relative importance of the several provisions which go to make up a statute, there are three types of statutes.

1. Acts which have a principle provision supported by subordinate enactments. An example of this class is the Illinois Optometry Act of 1919.[51]

2. Acts which contain several related main provisions, each one of which has subordinate provisions. The Road and Bridge Act of 1913[52] is an example of this third type.

3. Acts which consist of a series of related and equal provisions all dealing with one subject. The Practice Act of 1907[53] is a series of regulations for the conduct of litigation and court procedure.

It will be noticed that the examples given for the second and third types are revisions or consolidations of earlier laws. Practically all independent bills which do not revise or consolidate, are concerned with a single leading principle and fall naturally into the first class. Thus, in the Optometry Act, the "core" of the measure is the provision that it shall be unlawful to practice optometry without a license. The provisions for examination of applicants, for the issuance, refusal, revocation and renewal of licenses, and for the payment of fees are the administrative machinery to make the main

[51] Hurd, 1919, p. 2062.
[52] Hurd, 1919, p. 2567.
[53] Hurd, 1919, p. 2275.

provision effective. Not all bills, however, are pure examples of any of these classes. Some involve combinations of any two or all three. The Criminal Code,[54] as enacted in 1874, does not fall so readily into any one classification.

The bill-drafter must, at the outset, visualize the elements of the proposed bill and by weighing the relative importance of the several provisions, determine to which class the measure belongs. As has already been said, nearly all new legislation falls within Class 1, and most of the bill-drafter's work will have to do with that form. The suggestions as to the arrangements for bills in Classes 2 and 3 may be briefly stated.

Bills of the second type are similar to those in Class 1, except that there are several main enactments instead of one. The principles, therefore, suggested for the arrangement of the provisions of bills of the first type are applicable to those of the second class. Bills of the second class should be divided into the several main divisions, each with its leading principle. Each main division with its subordinate provisions should be carefully separated from the other divisions and then worked out in complete detail as though it alone constituted the bill.

The arrangement of a bill that is composed of equal provisions relating to a common subject must be governed by different principles. Sometimes there is a natural sequence of steps in a connected account and this suggests a logical order for the provisions. Thus, the Practice Act of 1907 regulates procedural matters in their customary order in litigation, commencing with service in suits and ending with writs of error and appeals. But there may not be a natural sequence in the provisions and a more arbitrary order must be adopted. Division I of the Criminal Code in defining and punishing crimes, takes the offenses alphabetically, commencing with abduction and proceeding to vagabond and witnesses.

New legislation generally takes the form of bills in Class 1, i. e. with a single leading principle. Because this is the most common form, the arrangement of such a bill will be considered at greater length. The most important element of a bill of this character is the provision stating the leading principle and that provision should be embodied in a short concise section and placed as near the beginning of the bill as possible. The advantage to be gained by the early statement of the principle or motive of the bill is that the reader may, by reading the first two or three sections comprehend the drift of the act. It enables him to fix clearly in his mind the body or "core" of the legislation. Having mastered that from a concise statement, he is prepared to proceed with ease to the details, exceptions and special provisions. If, on the other hand, he is confronted with a mass of details without a clear comprehension of the body of the act, he must mentally support the superstructure until he is able to discover the foundation upon which it is built.

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[54] Hurd, 1919, p. 970.

Frequently, a difficulty will arise as to whether the predominating idea is expressed in a declaration of the law as it affects the individual, or in the agency created for its enforcement. The relative importance of the two provisions must be the first consideration. Thus, a board may be created for a specified purpose with certain powers and duties. The administrative features are wholly subordinate to the establishment of the board. Sections may be required creating crimes and providing penalties but these are merely incidental to the main purpose. The Public Utilities Act of 1913[55] is an example of such a measure. The declaration of the principle of law governing public utilities is section 32 of Article IV. This section requires that service be adequate and rates or other charges just and reasonable. Why is this not the important feature? For the reason that this is merely a continuation of the common law principles regarding public utilities. There is no departure from existing law in this respect. The main feature of the act is not to lay down any new principles of law, but to create a new machinery for administering the old law. The case is quite different with the Illinois Optometry Act. The principle of law here expressed prohibits the practice of optometry without a state license. Without such a statute anyone might practice that profession and so this amounts to a real alteration in the governing law. So with the Workmen's Compensation Act.[56] The old common law liability for damages based on negligence is wiped out and a new system of compensation for injuries substituted. In each of these laws, the alteration of the existing principles of law is the important feature of the act and the powers and duties vested in the Department of Registration and Education, in the one case, and the Industrial Commission, in the other, are merely the machinery for administering the new principles of law.

The examples given illustrate the two extremes in which either the provision stating the law or the provision creating the agency for its enforcement, clearly predominates in importance. Between these extremes come many bills in which these provisions are more equal in importance. As to such bills two suggestions can be made.

1. If possible, place the declaratory provision first and the administrative feature later. Frequently, the statement of the law will require a reference to the agency for its enforcement. Referential phrases such as "the board by this act created" may be used to get around this difficulty. But the references may become too complex and awkward to be easily carried in mind by the reader and convenience and ease may then require that the order be reversed.

2. Sometimes the provisions creating the agency are shorter and less complicated than the declaration of the legal principle. In that case it may be better to state first the more simple proposition and having disposed of it shortly, pass on to the lengthier, more complex provision.

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[55] Hurd, 1919, p. 2324.
[56] Hurd, 1919, p. 1450.

However, there are some provisions which may precede the statement of the leading principle. Thus, when the bill provides a short title, that may properly be placed at the beginning. Such a provision is short and detached from the subordinate details of the bill. It does not tend to confuse or befog the statement of the law, but may be dismissed from the mind of the reader as he passes to the body of the bill. Occasionally a bill will have a special provision which may properly precede the main provisions. Thus, Section 1 of the Vocational Education Act of 1919[57] accepts for the State of Illinois the benefits of a Federal Law for the promotion of vocational instruction. This provision is distinct from the following sections which establish a board and prescribe its powers and duties, and its brevity and importance justify its position in the arrangement.

Another consideration may justify such an arrangement; the statement of the leading principle may require some explanatory matter to precede it. Thus, where the terms employed in a bill require definitions for an understanding of the provisions, the section containing those definitions may properly come at the first of the bill. The advisability of the use of definitions will be considered in a later chapter, and only their place in the arrangement discussed here.

Sometimes it is necessary to apply a law to a variety of cases or a variety of situations calling for similar treatment. To save the repetition of a recurring series of words, the bill may adopt an arbitrary term or symbol to cover artificially, matter which it could not by natural interpretation be understood to embrace. Thus, the phrase "noxious weeds" may be employed as a short cut for a number of specified plants. Obviously, the explanation of the artificial meaning of such a term should precede its use. On the other hand, when a word is correctly and properly employed to convey its accustomed meaning but it is desired to limit its application or define it more precisely, such a definition may come after its use. But in such a case, the definition should follow shortly and not be placed at a distance from the language making use of the word defined.

Frequently, a bill or a provision stating a principle of law is not designed to be universally applicable but either affects only specific situations or else provides exceptions from its general operation. The particular group of facts, conditions or circumstances to which the legal principle is designed to apply is spoken of as the legal case. If the situation to which the law is to apply is the usual and general one, and the exception is the unusual, the principle may be stated generally first and the exception or exemption be permitted to follow.[58] But if the law is designed to operate not generally and usually, but only in a precise situation or case, good draftsmanship demands either that the legal case be stated before the principle of law or that some intimation be

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[57] Hurd. 1919, p. 2834.

[58] See the Motor Vehicle Law, Secs. 8 and 20, Hurd. 1919, pp. 2621, 2626.

given by reference to that case. If the legal case is of a character that can be expressed briefly it may be stated before the principle and in the same section. Thus section 1 of a bill to legalize certain school elections says:

"In all cases where a majority of the inhabitants of any compact and contiguous territory voting on the proposition, having voted at any election called for the purpose by the county superintendent of schools, in favor of the organization of such territory into a community high school district, and when at a subsequent election similarly called and held a board of education has been chosen for such district. . . ."[59]

But if the statement of the legal case is lengthy and involved the reader should not be burdened with the details of the case before the principle is disclosed. Acts conditioned on a local referendum furnish illustrations of legal cases which frequently require several sections for statement. A bill of this kind should contain an intimation of this case by referential language and defer the statement of the details of the case until after the statement of the law. The first section of an act providing for community consolidated school districts passed in 1919 is as follows: "Subject to the conditions of sections 84c, 84d, 84e, 84f and 84g of this Act, any compact and contiguous territory bounded by school district lines may be organized into a community consolidated school district."[60]

The subordinate provisions of a bill vary so much in character and the combinations are so many that no rules can be laid down for their order. However, some general suggestions can be made which in particular cases may determine or influence the arrangement.

1. Give precedence to the more important provisions, those of normal and general application being placed first.

2. Or if the provisions of a bill, or some of them, set out successive steps in a proceeding, the order of the provisions should follow the natural sequence. Thus, a provision for the issuance of a license should precede a provision for its revocation.

When a bill does not primarily create a crime but the prohibition of certain acts is required as a necessary provision to make effective the purpose of the bill, it may be convenient to prohibit those acts as they occur in the narrative and later specifically create them as crimes and provide penalties for their commission.[61]

Local, temporary or exceptional provisions, being less important, should be placed at the end of the bill. Provisions which are not closely connected with the narrative of the bill find a logical place at the end. Thus an emergency clause, which makes an act effective before July 1, or a "take effect" provision, which postpones the going into effect after that date, is customarily placed at the end.[62]

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[59] Hurd, 1919, p. 2719.

[60] Hurd, 1919, p. 2707; see also chapter on Forms, subheading Referendum provision.

[61] See an Act in relation to the sale of farm seeds, Hurd, 1919, p. 56, and Game and Fish Code, Hurd, 1919, p. 1548.

[62] The constitution, Article IV, Section 13, says the emergency "shall be expressed in the preamble or body of the act." An act of 1871-2 relating to Justices of the Peace in Chicago expresses the existence of an emergency in a preamble (Laws 1871-2, p. 548) but instances of this kind are rare. The word "preamble" has been omitted from this provision by the constitutional convention of 1920.

If the bill includes a provision repealing acts or parts of acts, this provision should follow the body of the act but precede an emergency clause or "take effect" provision.

The subject matter may suggest other arrangements equally proper for the individual case. It cannot be hoped to do more than suggest the principles which will most frequently be useful. In the working out a particular bill there will often be variations and exceptions. Sometimes the arrangement will follow a combination of the principles suggested. The Criminal Code has the sections of Division I arranged in the alphabetic order; the balance of the act both as to sections and divisions follows the sequence of the successive steps of a criminal proceeding. It has been said with a measure of truth that the rules of good drafting are the rules of literary composition. Certainly it is true that a careful outline of the subject matter prepared in advance of the actual drafting will afford a logical and intelligent treatment and lay the groundwork for lucid legislation.

The use of sections is important to make the separate propositions of a bill stand out clearly by dividing the text accordingly. It is, like paragraphing, a visual aid to the understanding. The length of sections, ordinarily, will be governed to an extent by the treatment of the subject but the sections should be kept short not only as an aid to visualization but for convenience in amending. A constitutional provision prohibits amendment by reference and requires that the "section amended shall be inserted at length in the new act."[63] Probably no more forceful argument could be made for short sections than to call attention to Section 1 of Article V of the Cities and Villages Act.[64] This section recites in ninety-eight clauses the powers of corporate authorities of cities and villages. Few sessions of the General Assembly pass without the amendment of this section and to effect the slightest change requires the re-enacting of the whole section covering seven or eight pages of the session laws. Section 61 of the County Act is even longer, but probably not so frequently amended. In 1919 three bills amending this section were passed covering thirty-three pages in the session laws.[65]

The County Court Act[66] contains an interesting treatment in this respect of the terms of the various county courts. In order to facilitate amendments to the enactment, one sentence is broken up into a number of sections so that each dependent clause is made a section. A portion of this will illustrate the form of the whole act.

"Sec. 8. The law terms of the County Court, except as otherwise hereinafter provided, shall commence on the second Monday of the months as follows, to-wit: In the Counties of—

Sec. 9. Adams, first Monday in January. May and August.
Sec. 10. Alexander on the first Monday of March, July and November.
Sec. 11. Bond, in January, June and November.
Sec. 12. Boone, in March, June and December.
Sec. 13. Brown, in January and June."

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[63] Constitution of 1870, Article IV, Section 13; see also Veto Messages, 1909, Senate Journal, 1915, p. 1674.
[64] Hurd, 1919, p. 327.
[65] Laws 1919, pp. 370, 381, 392.
[66] Hurd, 1919, p. 906.

In the case of the longer sections it is generally an advantage to paragraph as frequently as the text will permit.

Another useful aid in the clear presentation of the substance of a bill is found in some cases in the breaking up of the bill into articles as well as sections. The purpose of grouping sections into articles is to bring together the sections which are more closely related to each other and less closely connected with the balance of the bill.

Ilbert, speaking of the use of articles, cautions against excessive subdivision. It seems doubtful, however, whether there is any great tendency to over-subdivide. Two considerations must be borne in mind in regard to the advisability of dividing a bill into articles:

1. The continuity of the thought.
2. The length and complexity of the bill.

The first consideration must be whether the thought breaks up logically into related but distinct parts. An arbitrary subdivision which is uncalled for by the thought itself is confusing and worse than useless. Just how distinct this break between the parts should be to justify subdividing must depend somewhat on the length of the bill and its clarity in other respects. There would be no advantage in subdividing a bill of only a few short sections no matter how distinct or unrelated the provisions might be. On the other hand, as the length of the bill increases, the greater becomes the need for subdivision.

When a bill is divided into parts, each part should be numbered and given a short heading descriptive of the subject matter contained in it. It is obvious that headings or titles assist not only in locating particular provisions but also as a table of contents to disclose the scope of the whole bill.

There has not been uniformity in the matter of numbering sections where the sections are grouped in larger divisions. The Cities and Villages Act begins each article with a new series of section numbers. The section numbers in the Road and Bridge Act, on the other hand, run consecutively through the act. The latter system is preferable for the reason that each section is identified by its individual number without reference to the article, thereby eliminating the possibility of confusing sections of different articles.

PREAMBLES.

It was thought necessary formerly to attach to many statutes a prefactory statement of explanation or argument called a preamble. The preamble is generally not given a section number and consists of a series of connected clauses each introduced by "whereas." It concludes with "therefore" followed by the enacting clause and the body of the act.

The Charities Code of 1912[67] has a different form of preamble. Section 1 of the act states the purpose of the act in a sentence without the "whereas—therefore" form.

Generally the preamble serves no useful purpose and could well be omitted. It is to be presumed that the General Assembly is influenced by the public interest when it passes a bill; consequently a preamble to that effect adds nothing. An example of such a preamble is found in an act for the enlargement of Lincoln Park[68] which reads:

"Whereas, the health and the best interest of the public require that Lincoln Park in Chicago, be enlarged, therefore, ..."

A little more specific in its statement is this preamble:

"Whereas, the disease known as foul brood exists to a very considerable extent in various portions of this state, which, if left to itself, will soon exterminate the honey-bees; and . . . .

Whereas, the work done by an individual bee-keeper or by a state inspector is useless so long as the official is not given authority to inspect and, if need be, to destroy the disease when found, and

Whereas, there is a great loss to the bee-keepers and fruit growers of the state each year by the devastating ravages of foul brood; . . . ."[69]

But there can be no justification for a recital such as this stating that an evil exists and is causing damage and that the measures in the bill are the ones which in the judgment of the General Assembly will most effectively combat that evil. Such may be presumed from the enactment of the measure itself. It would seem that the reasons for the establishment of a state colony for epileptics[70] are so apparent as to make their recital in a preamble superfluous.

The courts have held very generally that in case of ambiguity, reference may be made to the preamble to determine the intent and scope of an act.[71] The preamble to a statute is no part of an act; still it may assist in ascertaining the true intent and meaning of the legislature.[72] Lord Coke speaks favorably of the preamble as "a good means to find the meaning of the statute, and a true key to open

[67] Hurd. 1919, p. 216.
[68] Hurd. 1919, p. 2101.
[69] Hurd. 1919, p. 90.
[70] Hurd. 1919, p. 256.
[71] Lewis' Sutherland Statutory Construction, Sec. 341.
[72] Edwards v. Pope. 3 Scammon (Ill.) 464 (1842).

the understanding thereof." But the fact that preambles have served a useful purpose to aid in the construction of poorly drafted acts is hardly a justification for their use. The draftsman should strive to state clearly his law in the body of his bill rather than to rely on what amounts to a restatement to correct the faults.

Then too, the operation of a preamble on the language of the act must necessarily be uncertain. A preamble does not aid in construing an act unless its language restricts or extends the scope of the act and when its expressions diverge from those in the body of the act, a contradiction results which can only be eliminated by a judicial decision.

This criticism of preambles is limited to their use in general statutes. There are special cases where their use is of value.

1. Some acts are based on extra-territorial happenings or facts which are not of general knowledge, and are not reasonably apparent from the statute itself. Thus, the preamble reciting the terms of a treaty entered into between the United States and Great Britian justifies and explains the act to grant the use of the canals of this state to the inhabitants of the Dominion of Canada upon conditions named.[73]

2. Frequently in appropriation acts to individuals, a statement of the facts, is incorporated in a preamble.

Even in such case, the statement of fact may sometimes be incorporated conveniently in the act itself as was done in an act for the relief of Charles Watters.[74]. Section I reads:

"The sum of one thousand dollars is hereby appropriated for the relief of Charles Watters who was seriously injured while engaged in the performance of his duties as a guard at the Illinois State Penitentiary at Joliet."

If the facts can not be handled in a subordinate clause, it is better perhaps that they be placed in a preamble rather than to have the law enact what is purely recital. Thus, the action of the Court of Claims relative to the claim or the reason why the claim was not presented could not well be stated elsewhere than in a preamble. Care should be taken to cut out all unnecessary matter and to limit the number of "whereas" clauses. Two appropriation acts of 1919[75] have ten clauses each. Preambles of this length with the constant repetition of "whereas" are ponderous and awkward.

The most useful function of the preamble is in connection with resolutions. These are not of a law-making character in Illinois,[76] and the preamble can be used to contain the descriptive or argumentative matter which prefaces the legislative expression of opinion, feeling or desire.

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[73] Hurd, 1919, p. 170.
[74] Laws 1919, p. 128.
[75] Laws 1919, pp. 124, 126.
[76] Constitution of 1870, Article IV, Section 11; Burritt v. Commissioners of State Contracts, 120 Ill. 322 (1887).

THE ENACTING CLAUSE.

The enacting clause or style is the short introductory phrase which establishes the instrument as law. The constitution of Illinois provides that "the style of the laws of this state shall be: 'Be it enacted by the People of the State of Illinois, represented in the General Assembly.'"[77] An enacting clause is an essential part of a law, and an enactment without it is void and inoperative.[78] Whether any variation from the form specified will invalidate an act has not been judicially determined, although the Attorney General has held that the insertion of the words "Forty-sixth" immediately before "General Assembly" in the enacting clause, rendered the act unconstitutional.[79] It should be noted that the court has held sufficient, a substantial compliance with the forms for process in Article VI, Section 33 of the constitution. However, the question is an academic one for draftsmen. Whether the form is mandatory in the sense that a slight variation would invalidate the act or not it is the duty of the legislator and the bill-drafter to see that the constitutional charge is followed exactly.

It is customary to place the enacting clause within the first section of a bill. Formerly, the subsequent sections were each introduced by a shorter enacting phrase such as, "Section 2. And be it further enacted;" Later, these enacting phrases were dropped leaving only the longer one in Section 1. Logically, this is not the proper place for it. Since the omission of the subsequent enacting clauses, the one enacting clause introduces the whole act. In fact the Supreme Court has held that although included in Section 1 it "is no more a part of Section 1 than it is a part of Section 49 or 50" and that the repeal of Section 1 without a saving clause did not leave the remaining sections without an enacting clause.[80] It would have been better when the individual enacting clauses were dispensed with, to have taken the remaining one out of Section 1 and placed it ahead of Section 1 in this manner:

> *"Be it enacted by the People of the State of Illinois, represented in the General Assembly:*
>
> Section 1. Whoever sends, etc."

However, the practice of including the enacting clause in Section 1 is so firmly fixed that it might be difficult to substitute the more logical arrangement.

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[77] Constitution of 1870, Article IV, Section 11.
[78] Burritt v. Commissioners of State Contracts, 120 Ill. 322; (1887); Wenner v. Thornton, 98 Ill. 156 (1881).
[79] Report, Attorney General, 1910, p. 77.
[80] Pearce v. Vittum, 193 Ill. 192 (1901).

CONSTRUCTION OF SENTENCES.

It may seem elementary in discussing bill-drafting to refer to and emphasize some general rules of composition. But the bill-drafter deals often with involved and intricate situations and his enunciation of the legislative will must always be exact and unambiguous. The elementary rules of expression have for him, therefore, a peculiar importance. Much of the obscurity and ambiguity of statutes is due to long and poorly constructed sentences. The bill-drafter should make a conscious effort to keep the sentences short. This will make more sentences and, at times, add somewhat to the length of a bill but if each sentence expresses a single thought, it will be easier for the reader to grasp that thought. Style must be forgotten and particularly the desire for well-rounded periods that roll along sonorously. It does not matter if the result is choppy and broken; in a task involving the difficulties of complex social regulation the constant striving must be for clarity and preciseness rather than a pleasant appeal to the ear.

There is frequently a tendency to compress a whole series of ideas into one sentence by the use of subordinate clauses and conjunctions. The result even if not ambiguous, is at least obscure and difficult. Take for example "An Act to remedy the evils consequent upon the destruction of any public records by fire or otherwise," approved and in force April 9, 1872.

"In all cases under the provisions of this act, and in all proceedings or actions now or hereafter instituted as to any estate, interest or right in, or any lien or incumbrance upon any lots, pieces or parcels of land, when any party to such action or proceeding, or his agent or attorney in his behalf, shall orally in court, or by affidavit, to be filed in such action or proceeding, testify and state under oath that the original of any deeds, conveyances, or other written or record evidence, has been lost or destroyed, or not in the power of the party wishing to use it on the trial to produce the same, and the record thereof has been destroyed by fire or otherwise, the court shall receive all such evidence as may have a bearing on the case to establish the execution or contents of the deeds, conveyances, records, or other written evidence, so lost or destroyed: Provided, that the testimony of the parties themselves shall be received subject to all the qualifications in respect of such testimony which are now provided by law: And, provided, further, that any writings in the hands of any person or persons which may become admissible in evidence, under the provision of this section or of any other part of this act, shall be rejected and not be admitted in evidence unless the same appear upon its face without erasure, blemish, alteration, interlineation or interpolation in any material part, unless the same be explained to the satisfaction of the court, and to have been fairly and honestly made in the ordinary course of business; and that any person or persons making any such erasure, alteration, interlineation or interpolation, in any such writing, with the intent to change the same in any substantial matter, after the same has been once made as aforesaid, shall be guilty of the crime of forgery, and be punished accordingly; and that any and all persons who

may be engaged in the business of making writings or written entries concerning or relating to lands and real estate, in any county in this state to which this act applies, and of furnishing to persons applying therefor abstracts and copies of such writings or written entries as aforesaid, for a fee, reward or compensation therefor and shall not make the same truly and without alteration or interpolation in any matter of substance, with the view and intent to alter or change the same in any material matter, or matter of substance, shall be guilty of the crime of forgery, and punished accordingly; and any and all such person or persons shall furnish said abstracts or copies as aforesaid, to the person and persons from time to time applying therefor, in the order of applications and without unnecessary delay, and for a reasonable consideration to be allowed therefor, which in no case shall exceed the sum of one dollar and fifty cents for each and every conveyance, or other like change of title, shown upon such abstract or copy; and any and all persons so engaged, and whose business is hereby declared to stand upon a like footing with that of common carriers, who shall refuse so to do, if tender or payment be made to him or them of the amount demanded for such abstract or copy, not exceeding the amount aforesaid, as soon as such amount is made known, or ascertained, or of a sum adequate to cover said amount, before its ascertainment, shall be guilty of the crime of extortion, and be punished by a fine of not less than $100, and not exceeding $1,000 therefor, upon indictment in any court having jurisdiction thereof, and shall also be liable in an action on the case, or other proper form of action or suit, for any and all damages, loss or injury, which any person or persons applying therefor may suffer or incur by reason of such failure to furnish such abstract or copy as aforesaid." (As amended by act approved and in force March 30, 1874).[81]

This sentence, after stating the case in which the law is designed to operate, makes admissible certain evidence to supply missing records, qualifies the weight to be given to the testimony of parties in interest, excludes altered writings unless the alteration is explained, defines the duty of persons furnishing abstracts, creates three separate crimes, provides penalties for violations thereof, and adds a civil liability in the case of one crime. These various matters might better have been separated and placed in several sections but even if included in one section, it would be easier to grasp if each provision had been made a separate sentence. Probably in this case no very serious difficulty results but the first sentence in Section 2 of "An act concerning the levy and extension of taxes,"[82] is so complicated and involved that judicial construction alone can settle the meaning of some of it.

Of course, a sentence expressing a single leading principle may include a number of coordinate phrases or clauses which render it complex and difficult. Thus there may be a series of subjects to which one predicate applies or a number of predicates may be joined to a single subject. The statement of the case in which the law is to operate may involve a variety of situations. To break up such a sentence so as to give to each coordinate part a complete sentence would involve much repetition. A very useful expedient to make apparent the relative value and position in the sentence of these parts is the detaching and numbering of these clauses as in the following example.

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[81] Hurd, 1919, p. 2447.
[82] Hurd, 1919, p. 2543.

"A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor.

2. By payment in due course by the party accommodated, where the instrument is made or accepted by accommodation.

3. By the intentional cancellation thereof by the holder.

4. When the principal debtor becomes the holder of the instrument at or after maturity in his own right."[83]

There has been no uniformity in the matter of designating detached clauses. The Sales Act[84] numbers the paragraphs within the sections by arabic numerals enclosed in parentheses and uses small enclosed italic letters for the clauses. The School Law[85] indicates detached clauses by the words "First," "Second" etc. The Fees and Salaries Act[86] has a great many detached clauses without any designation. The Uniform Partnership and Limited Partnership Acts[87] have an individual scheme of numbering which is apt to be rather confusing. The sentences in each section are numbered with arabic figures, 1, 2, 3, etc. Detached clauses are indicated by small letters and second subordinate sets of clauses by Roman numerals. If there is only one sentence and it has detached clauses, there are no arabic figures but the clauses are marked with small letters. This makes it appear as though the first markings are arabic figures in one section and then small letters in another section. It is doubtful whether marking or numbering the sentences in a section is ever necessary, and it has the disadvantage of introducing an extra set of markings. If it is desired to refer to a particular portion of a section, the reference can be made by a few words indicating the subject matter. The reference to the subject matter is clearer and more easily carried in the mind of the reader, as appears from the two examples quoted. The first indicates the section by number and the particular portion referred to, by subject matter.

"Sec. 14. Each of the following constitutes a misdemeanor punishable, upon conviction, by a fine of not more than one hundred dollars.

(h) Violation of the reasonable sanitary regulation prescribed by the Department of Registration and Education pursuant to the provisions of section 12 of this act."

The following illustrates the "blind" reference:

"(c) A partner who has caused the dissolution wrongfully shall have:

I. If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under paragraph (1) subject to clause (2a II), of this section."[88]

It is desirable that a uniform system be adopted for all bills and probably as simple a method as any is the numbering of detached clauses with arabic figures without parentheses. Sometimes a second subordinate series occurs in the midst of the first series. Small letters may be used to designate the second set as in section 75 of the General Corporation Act.[89] If a second set of independent clauses follows in the same sentence or section, the designation

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[83] Negotiable Instruments Law. Hurd, 1919, p. 2035.
[84] Hurd, 1919, p. 2654.
[85] Hurd, 1919, p. 2689.
[86] Hurd, 1919, p. 1500.
[87] Hurd, 1919, pp. 2218, 2229.
[88] Uniform Partnership Act, section 38, Hurd, 1919, p. 2226.
[89] Hurd, 1919, p. 734.

should be the arabic numerals beginning again with 1, 2, 3, etc., as in the following section:

"Sec. 635. A person who,

1. Displaces, removes, injures or destroys any rail, sleeper, switch, bridge, viaduct, culvert, embankment or structure, or any part thereof, attached, appertaining to or connected with any railway, whether operated by steam or by horses; or

2. Places any obstruction upon the track of any such railway; or

3. Wilfully discharges a loaded fire-arm, or projects or throws a stone, or any other missile, at a railway train, or at a locomotive, car or vehicle standing or moving upon a railway; or

4. Wilfully displaces, removes, cuts, injures or destroys any wire, insulator, pole, ear, dynamo, motor, locomotive or any part thereof, attached, appertaining to or connected with any railway operated by electricity, or wilfully interferes with, or interrupts any motive power used in running said road, or wilfully places any such obstruction upon the track of any such railway, or wilfully discharges a loaded fire-arm, or projects or throws a stone, or any other missile, at such a railway train, or locomotive, car, or vehicle standing or moving upon such railway;

Is punishable as follows:

1. If thereby the safety of any person is endangered, by imprisonment for not more than ten years;

2. In every other case, by imprisonment for not more than three years, or by a fine of not more than two hundred and fifty dollars, or both."

However, more than one set of clauses in the same sentence is apt to be somewhat confusing and should be avoided, if possible, by the bill-drafter.

The value of detaching clauses in long sentences is obvious. But there is no useful purpose served by breaking up a short sentence and detaching a single clause. One of the reasons for detaching clauses is to show the relation of co-ordinate parts and this reason fails when there is only one clause. In the Fish and Game Code[90] occurs this sentence in which the detached part might well have been continued without any break.

"Section 33 Deer). It shall be unlawful:

To hunt, kill, take or destroy, or to attempt to hunt, kill, take or destroy any wild deer in the state until the 10th day of November, A. D. 1925."

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[90] Hurd, 1919, p. 1554.

PROVISOS.

The practice of stating a principle in general terms and then appending to it an additional statement designed to limit or restrict or qualify its generality has contributed greatly to the length and awkwardness of legislative sentences. The qualifying provisions are known as provisos and are generally introduced by the words, "provided" or "provided, however." One objectionable feature of the use of provisos is the consequent tendency to state a proposition inaccurately or too broadly relying on the proviso to correct and limit the principle. Thus the provision,

"Whoever shall ride or drive faster than a walk, over any bridge in this state, owned or controlled, either the whole or a part thereof, by any city, village or town of this state, shall, for each offense, be fined in a sum not exceeding ten dollars nor less than one dollar. . . ."[91]

is too general a statement to create the crime in the mind of the legislature, as is indicated by the proviso which follows

"Provided, that a notice shall be posted on such bridge, warning against riding, or driving on such bridge faster than a walk. . . ."

The crime has to do only with bridges having two qualifications. 1. They must be partly or wholly owned by municipalities. 2. They must have a certain notice posted upon them. The sentence, properly constructed should have so described the bridges and have dispensed with the proviso clause.

Section 20 of Division II of the Criminal Code[92] provides that

"All offenses herein defined shall be prosecuted and on conviction punished as by this act is prescribed, and not otherwise; and all offenses not provided for by statute law, may be punished by fine or imprisonment, in the discretion of the court: Provided, the fine shall in no case exceed $500, and the imprisonment one year."

There is no excuse for so phrasing the sentence to provide an unlimited penalty and qualifying it by a proviso. It should state the limits of the penalty in the first instance as "may be punished by a fine of not more than $500 or imprisonment for not longer than one year." The aim should be to define precisely the limits of the particular subject matter rather than to include too much and then carve off a portion.

The provision, above quoted, which penalizes riding or driving faster than a walk over municipal bridges illustrates a very real danger in connection with the use of provisos. Commencing with "provided," the sentence is:

"Provided, that a notice shall be posted on such bridge, warning against riding, or driving, on such bridge, faster than a walk, such fine to be re-

[91] Hurd, 1919, p. 396.
[92] Hurd, 1919, p. 1059.

covered, with costs, before any justice of the peace or police magistrate of the county where the offense is committed, upon sworn complaint in writing, upon which a warrant for the arrest of the offender shall issue, and it shall be the duty of every constable of the county, and every marshal, policeman and police constable, and all other officers of such city, village or town, owning or controlling the whole or in part such bridge, having the power to make arrests, whenever aforesaid offense is committed in the view of such officer or officers, to forthwith take in custody the person or persons so committing aforesaid offense, and bring him or them before any justice of the peace or police magistrate of the county, to be dealt with according to law, and such officer so taking in custody such offender, or any officer of such city, village or town, owning or controlling the whole or a part of such bridge where such offense is committed, may make the complaint upon which warrant shall issue against the offender, all fines collected under this act, shall be paid into the common school fund of the county."

Grammatically all of this portion of the sentence is dependent upon the "provided" and is included within the exception. But the text quite clearly indicates that only the short provision as to notice is intended as a limitation of the enactment preceding the proviso. We have then the arrangement of the sentence and the subject matter indicating different constructions—a situation which may easily involve grave difficulties. If the use of a proviso is ever justified, care should be taken to exclude from it all independent extraneous matter.

The general rule, as stated before, should be to make the first description accurately define the limits of the subject matter. This is not always possible or convenient. Frequently the rule is most clearly put by giving it generally and then stating the qualifications to that rule or the exceptions excluded from it. The use of provisos in this situation is not incorrect. "The office of a proviso, generally, is either to except something from the enacting clause, to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extending to cases not intended to be brought within its purview."[93] Take for example section 10 of Division XV of the Criminal Code:[94]

"When a prisoner has been committed to the penitentiary in pursuance of a sentence of imprisonment therein, or has been committed to the county jail pursuant to a sentence of confinement therein, and the judgment is affirmed, the time of service under the sentence of such prisoner shall commence to run from the time of such commitment, notwithstanding a supersedeas may have been granted: Provided, if any such prisoner is admitted to bail after such commitment, the time during which he is out upon bail shall be excluded from the computation of his time of service."

If the attempt is made to state the principle without excepting the situation which is defined in the proviso, the sentence becomes very awkward. In other words, the rule must be stated positively and then the exception negatived. But—and this is the point as to the use of provisos in any case—the proviso may be stated as an independent sentence and placed immediately after the rule it qualifies. If a disjunctive is desired, "but" or "however" or "except" may be used. These words are as definite in their application as "provided" and they have the advantage of being the usual and popular forms of ex-

[93] Huddleston v. Francis, 124 Ill. 195 (1888).
[94] Hurd, 1919, p. 1078.

pression. Language which is peculiarly limited to legal diction should be avoided in favor of ordinary and common phraseology, if the popular words convey the meaning equally well.

If the leading principle and the qualifying statements or exceptions are long, they may be given separate sentences instead of stringing them one after the other in one long sentence. It will be found that the wording can indicate the relationship clearly without the necessity for the more awkward arrangement. Section 3 of the Parole Act[95] furnishes an illustration of a sentence with a proviso of four clauses which might well be broken up into five sections.

Attention should be called to a rather frequent misuse of the proviso form in legislation. Most courts have recognized that while the legitimate function of the proviso is to modify or restrain the preceding enactment, it is sometimes used as an independent enactment without reference to the limitations of the preceding statement and where that intent is evident, have given to it that construction.[96] The word "provided" becomes, in such cases, a mere conjunction. Obviously, there is no excuse for an arrangement which introduces a conflict between the form of the sentence and the subject matter and thereby furnishes a subject for judicial determination as to which feature is controlling.

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[95] Hurd, 1919, p. 1085.

[96] In re Day, 181 Ill. 73 (1899); Hackett v. Chicago City Ry. Co., 235 Ill. 116 (1908); People v. Continental Beneficial Association, 289 Ill. 40 (1919).

PHRASEOLOGY.

Tense: One of the main faults to be charged to legislative enactments is the use of archaic and stilted language which, in some way, seems to have become associated with the expression of legal principles. Any change which tends to replace this with the ordinary and popular words of current speech, so far as practicable, is an improvement in the form. Of course, technical terms and legal phrases with a certain definite meaning should not be discarded at the sacrifice of preciseness. It is only the useless barnacles of legal phraseology which are to be condemned.

The unnecessary use of the future tense furnishes an illustration of an awkward practice more or less general in legislation. Every law is designed to afford a rule for a continuing present. It should, therefore, speak in the present tense. The use of the future tense seems to be a subconscious recognition of the fact that laws are prospective in the sense that their enactment precedes the acts upon which or the situation in which they are to operate. The present tense is a more simple and natural form of expression, and for that reason is to be preferred. This is obvious from a comparison of the following enactment given first as it appears in the statute book with the future tenses, and then with those verb forms replaced by the present tense.

"Any person, firm or corporation who shall send, deliver or mail, or in any manner shall cause to be sent, delivered or mailed, any paper or document simulating or intended to simulate a summons, complaint, writ or other court process of any kind, to any person, firm or corporation, shall be guilty of a misdemeanor. . . ."[97]

"Any person, firm or corporation who sends, delivers or mails, or in any manner causes to be sent, delivered or mailed, . . . is guilty of a misdemeanor. . . ."

The future auxilliary "shall" disappears with the substitution of the present for the future tense. "Shall" is, however, used also to express a command. When used in this sense, "shall" is necessary and proper.

With the discarding of the future tense, the awkward future perfect gives way to the perfect, as in this sentence:

"In all cases where the officers who shall have canvassed the election returns shall have found that a majority of the voters voting upon the question shall have voted in favor . . ." [98]

Using the perfect tense, the sentence reads as follows:

"In all cases where the officers who have canvassed the election returns have found that a majority of the voters voting upon the question have voted in favor . . ."

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[97] Hurd, 1919, p. 1011.
[98] Hurd, 1919, p. 1218.

There are other objections to the use of the future and future perfect tense which may be noted. The future auxiliary "shall" becomes confused with the imperative "shall." This may have contributed to the weakening of the imperative form by judicial construction. In the expression, "shall be guilty of a misdemeanor and punished" the "shall" does duty in both senses. "Shall be guilty" is merely the future tense. "(Shall be) punished" is imperative.

Another objection is that there is a tendency on the part of a bill-drafter employing the future tense, to slip back into the more customary form of expression. The use of both tenses sometimes occurs in the same sentence, as in section 46 of the Criminal Code.

"If any two or more persons conspire or agree together, or the officers or executive committee of any society or organization or corporation, shall issue or utter any circular or edit . . ."[99]

Preciseness—ejusdem generis: The rules of literary composition apply to bill-drafting as well as to other forms of expression. Indeed the virtues of good English, brevity, simplicity, clarity and preciseness, are even more important in legislation than in other writing since by legislation must be regulated and controlled all the various rights and duties of human relationship. However, statutory expression is a distinct study with problems and difficulties peculiar to itself. This discussion will consider particularly some of the faults that have been associated with statutes and make detailed suggestions limited to this subject.

It is essential to good bill-drafting that the subject matter be first mastered completely. Prolixity and indirectness are frequently the result of a vague groping for the principle desired. Good expression cannot follow a hazy impression. When the principle is clearly understood, state it without unnecessary verbiage. Make each word justify its use. But in the desire for conciseness, do not treat inadequately a complicated subject. Necessary length is not a fault.

When a rule can be stated in general terms, that is to be preferred to an enumeration of details. The section of the Criminal Code concerning forgery and counterfeiting is an example of a statement, which might be condensed greatly by the use of general language.

"Every person who shall falsely make, alter, forge or counterfeit any record or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order, or any accountable receipt, or any order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release or receipt for money or goods, or any acquittance, release or discharge for any debt, account, action, suit, demand or other thing, real or personal, or any transfer or assurance of money, stock, goods, chattels or other property whatever, or any letter of

[99] Hurd, 1919, p. 991.

attorney or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, or order, or assignment of any bond, writing, obligatory, or promissory note for money or other property, or any ticket or pass for the passage of any person upon any railroad or other conveyance, or for the admission of any person to any entertainment for which a consideration is required, or any other written instrument of another, or purporting to be such, by which any pecuniary demand or obligation, or any right in any property is, or purports to be created, increased, conveyed, transferred, diminished or destroyed; or shall counterfeit or forge the seal or hand-writing of another, with intent to damage or defraud any person, body politic or corporate, whether the said person, body politic or corporate reside in or belong to this state or not; or shall utter, publish, pass or attempt to pass as true and genuine, or cause to be uttered, published, passed, or attempted to be passed as true and genuine, any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person, body politic or corporate, whether the said person, body corporate or politic reside in this state or not; every person so offending shall be deemed guilty of forgery, and shall be imprisoned in the penitentiary not less than one year nor more than fourteen years." [1]

The danger in this kind of an enumeration is in the likelihood of omitting matters which should be included. The omission may be construed as a deliberate exclusion by the familiar rule of construction, *expressio unius est exclusio alterius*. Thus, when the constitution says "the General Assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessments, or by special taxation of contiguous property or otherwise,"[2] "by necessary implication, it (the General Assembly) is inhibited from conferring that power upon other municipal corporations or upon private corporations."[3] However, the rule that the expression of one thing or one mode of action in an enactment is an exclusion of all other things or modes is merely a presumption to aid in determining the legislative intent. In the words of the court, "the maxim . . . should never be used to override a different purpose plainly indicated."[4] This language was used with reference to a statute which empowered cities to acquire land by "purchase, lease or gift" for certain purposes. If the *expressio unius* rule were applied, acquisition of land by any other means would be forbidden. But the court held that it was not the intention of the legislature to restrict the power of municipalities to the methods expressly mentioned. This suggests to the bill-drafter that if an enumeration is used which is not intended to be exclusive, that intent can be made clear by words to that effect. Article IX of the Constitution, furnishes an example of a statement to the effect that an enumeration is not to be taken as exclusive of objects not mentioned. Section 1 of that article gives the General Assembly power to tax "peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen,

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[1] Hurd, 1919, p. 1012.
[2] Constitution of 1870, Article IX, Section 9.
[3] Updike v. Wright, 81 Ill. 49 (1876).
[4] Helm v. City of Grayville, 224 Ill. 274 (1906).

jugglers, inn-keepers, grocery-keepers, liquor-dealers, toll bridges, ferries, insurance, telegraph and express interests or business, venders of patents and persons or corporations owning or using franchises and privileges . . ." Section 2 provides that "The specification of the objects and subjects of taxation shall not deprive the General Assembly of the power to require other subjects or objects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this Constitution."

As a general rule, on account of the difficulty of making an enumeration complete, words descriptive of a class are to be preferred to a list of the members of that class. On the other hand, loose generalizations are to be avoided where complicated and limited situations require a precise, exact definition. When a general rule is laid down, all possible applications should be tested to see whether their inclusion is desirable. Senate Bill No. 71 introduced in the Fifty-first General Assembly undertook to regulate the disposal of the bodies of dead animals. Section 1 provided that

"After the first day of October, 1919, it shall be unlawful for any person, firm, association or corporation to dispose of or attempt to dispose of the body of any dead animal by burying, burning or cooking, without a certificate of registration issued by the Department of Agriculture."

The intention was to require the licensing of persons engaged in the business of disposing of dead animals, but through inadvertence the bill was worded so broadly that it included even a farmer who desired to bury a dead horse. The bill, otherwise desirable, was tabled because the rule was too general.

Statutes frequently contain an enumeration of particular persons or things and follow this with a general term indicating a class or group. Although the matter is not without difficulty in a great many cases, this combination is to be avoided whenever the particular enumeration can be made complete or the general class can be definitely and exactly defined.

The bill-drafter may employ in its full sense a general term and precede it by particular words merely as examples, only to find that the general phrase is limited and restricted by judicial construction, to the kind or species of the specific words. This is the doctrine of *ejusdem generis*. Thus the term "provisions" construed broadly might be held to include tobacco but it was held that when used in a statute authorizing municipalities "to regulate the sale of meats, poultry, fish, butter, cheese, lard, vegetables and all other provisions" it could extend only to provisions of the same character as those specifically enumerated and therefore meant only articles of food.[5] A civil rights statute provided that all persons should "be entitled to the full and equal enjoyment of the accomodations, advantages, facilities and privileges of inns, restaurants, eating-houses, barber shops, public conveyances on land and water, theaters, and all other places of public accommodation and amusement." The general words were held not to include a drug store.[6] The expression " counterfeit or spurious coin,

[5] Gundling v. City of Chicago, 176 Ill. 340 (1898).
[6] Cecil v. Green, 161 Ill. 265 (1896).

forged bank notes or other forged instruments" was held not to include forged labels and trade-marks.[7]

The rule of *ejusdem generis,* however, is subject to exceptions and qualifications which increase its danger to the unwary bill-drafter. "This is only one of many rules of construction, all of which are to be employed for the attainment of the same end, viz,. that of ascertaining the intention of the Legislature . . . where from the whole instrument a larger intent may be gathered, the rule under consideration will not be applied in such manner as to defeat such larger intent."[8]

The statute, defining burglary, used the words "any dwelling house, kitchen, office, shop, storehouse, warehouse, malt-house, stilling-house, mill, pottery, factory, wharfboat, steamboat or other water craft, freight or passenger railroad car, church, meeting house, school house *or other building."* The general term "other building" was held to include a chicken house. There is no opportunity for an application of the rule from this enumeration. "What building," said the court, "not a dwelling house, legally speaking, is of the same kind as a dwelling house?" "If the particular words exhaust a whole genus, the general words must refer to some larger class."[9] Still another qualification. "The *ejusdem generis* rule does not apply where the specific words signify subjects greatly different from one another, for here the general expression might very consistently add one more variety; in such case, the general term, must receive its natural and wide meaning."[10] So the bill-drafter, relying on the application of the *ejusdem generis* rule, may find his general term given a more inclusive meaning than intended.

Unfortunately, it is not always possible to avoid the use of a combination of specific words and a general term. It may be impossible to make the enumeration compete; a general rule may be difficult to express exactly and precisely. In 1903, the General Assembly passed a law requiring mine owners and operators to provide mines with wash-rooms.[11] The Supreme Court held the act to be class legislation and therefore unconstitutional. The court agreed that the miner becomes "covered with grease, smoke, dust, grime and perspiration; that without an opportunity to bathe and change his attire, he cannot clothe himself comfortably for his journey through cold weather to his home; that these adverse conditions inevitably lead to colds, consumption, pneumonia and general unhealthfulness . . ." But "many men in this state are employed in the foundaries and steel mills who work in a higher temperature than do the miners, surrounded by conditions deleterious to health and inimical to longevity."[12]

As a result of this opinion an act was passed by the General Assembly in 1913 which made the duty of providing wash-rooms ap-

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[7] White v. Wagar, 185 Ill. 195 (1900).
[8] Webber v. City of Chicago, 148 Ill. 313 (1894).
[9] Gillock v. People, 171 Ill. 307 (1898).
[10] McReynolds v. People, 230 Ill. 623 (1907).
[11] Laws 1903, p. 252.
[12] Starne v. People, 222 Ill. 189 (1906).

plicable to "every owner or operator of a coal mine, steel mill, foundry, machine shop, or other like business in which employees become covered with grease, smoke, dust, grime and perspiration to such extent that to remain in such condition after leaving their work without washing and cleansing their bodies and changing their clothing, will endanger their health or make their condition offensive to the public."

The dilemma of the bill drafter is obvious. No enumeration could be made of the occupations sharing the evil this legislation was designed to relieve; the general classification is uncertain and indefinite because it merely states that the act shall apply to all business where the health and comfort of the pubic require the law. The result,—a specific mention of the main occupations it was designed to affect, together with a general reference, following the wording of the court's opinion, to other employments where the same conditions prevail,—is not a satisfactory piece of bill-drafting.

But the court held that the *ejusdem generis* rule had no application since the obvious intent was to meet the constitutional objection to the earlier statute by adding the general term to include other occupations which needed the same sanitary regulations.[13]

Where a combination of specific terms and general words is unavoidable, the only way to avoid the possibility of a restricted construction of the general phrase, is to show by express words that its generality is not to be limited or affected by the preceding specific enumeration. For example, in the "wash-room" act above discussed there could have been no doubt of the proper construction to be placed on the general phrase if the General Assembly had added: "The term 'other like business' is not to be confined or restricted to the specific businesses mentioned but includes all businesses of the character described."

Indefinite and uncertain standards: As has already been said, simplicity is a cardinal virtue in drafting legislation. Popular words with well understood meanings are to be preferred to abstruse terms. However in the desire for simplicity, preciseness must not be sacrificed. Statutes must necessarily treat of technical matters and in the various fields of human endeavor recourse must be had to technical terms which have limited significations in their own plane. In a statute regulating mining we may expect to find a provision unintelligible to persons unacquainted with that industry such as the following:

"Every mine inspector in the regular inspection of mines shall measure with an anemometer and determine the amount of air passing in the last cross-cut in each pair of entries in pillar and room mines, or in the last room of each division in long-wall mines."[14]

The Practice Act was intended not for the general public but for the use of the members of one profession. Consequently, it is not necessary, even if it were possible, to avoid words like

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[13] People v. Solomon, 265 Ill. 28 (1914).
[14] Hurd, 1919, p. 1972.

habeas corpus, certiorari and the like, or to render intelligible to the general public a provision like this:

"It shall not be necessary, in any pleading, to make profert of the instrument alleged; but in any action or defense upon an instrument in writing, whether under seal or not, if the same is not lost or destroyed, the opposite party may have oyer thereof and proceed thereon in the same manner as if profert had been properly made according to the common law." [15]

In statutes concerning the public generally the courts will, if at all possible, give to words their usual and popular meaning.[16] Ordinary words should, therefore, be used in their most general sense. For instance "laborer" in one sense means anyone who works with his hands. That may be called a technical definition. Its popular signification is an ordinary laborer or day workman. The court has consequently held that when used in the Civil Service Law it did not include a skilled artisan like a carpenter.[17]

Of course, this is not an invariable rule of construction. In seeking to give effect to what is deemed to be the legislative intent, not only may a less general meaning be given a word but the court may recognize an incorrect use of a word and let it convey a meaning which it does not properly bear. Thus the Appellate Court has said; "Numerous cases indicate that there has been a tendency in the profession to confound the two words 'cost' and 'fees.' In the ordinary sense, 'costs are an allowance to a party for expenses incurred in conducting his suit; fees are compensation to an officer for services rendered in the progress of the case.' "[18]

While the general rule is that words will be given their "common and popular acceptation and import," when technical words are used in a statute the court will presume that they have been used by the legislature in their technical sense.[19] This is particularly important in connection with the use of words which have acquired a well-understood legal signification. Thus "actions of account" is a technical term indicating a form of action and is not equivalent to "actions on accounts."[20] In construing a statute which used the expression "plead set-off to the action", the court says, "words of known legal import are to be considered as having been used by the legislature in that known sense, or according to their strict acceptation, unless there appears a manifest intention to use them in their common or popular sense."[21] "Crime" by common usage is synonymous with "felony," the Supreme Court has said but its legal signification and the one which the court will give it in statutes is broader and comprehends all offenses against the public.[22] The word "family" when used in statutes has been

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[15] Hurd, 1919, p. 2282.
[16] Crozer v. People, 206 Ill. 464 (1904); Culver v. Waters, 248 Ill. 163 (1911); Ruda v. Industrial Board, 283 Ill. 550 (1918); Fowler v. Johnston City Coal Co., 292 Ill. 440 (1920).
[17] People v. Board of Trustees, 283 Ill. 494 (1918).
[18] Galpin v. City of Chicago, 159 Ill. App. 135 at 166 (1910).
[19] Bedell v. Janney, 4 Gilman (Ill.), 193 at 206 (1847).
[20] Bedell v. Janney, 4 Gilman (Ill.), 193 at 206 (1847).
[21] Steere v. Brownell, 124 Ill. 27 (1888).
[22] Van Meter v. People, 60 Ill. 168 (1871).

given a variety of meanings but not the popular one of parents with the children without regard to residence.[23] Unless the context clearly indicates a different intent, the words "heir", "convey", "person" and "action" convey a limited meaning rather than the popular understanding.

A great many common words are descriptive of a quality without defining its limits or fixing a precise standard. Terms like "due," "proper", "dangerous," "sufficient," "extreme," "excessive," "necessary," "immediate," "forthwith" do not convey an exact impression but make an appeal to the judgment. Statutes should be precise and certain, laying down a definite rule of conduct. Words, therefore, which express a quality which may be more or less, should, so far as possible, be avoided in statutory language. It is not intended to suggest that this is always possible. The law relating to private wrongs is built about such terms as "reasonable care," "proximate cause" and "contributory negligence" and no amount of judicial definition or application to varying situations has served to make them convey more than an approximate impression. Frequently municipalities have prohibited the emission of "dense smoke." Obviously the adjective "dense" does not clearly define the offense nor apprize the public how much smoke may be set at large without constituting a violation. A criminal statute which does not inform a person whether or not his act infringes the law is, to say the least, unfortunate. Such an ordinance of the city of Chicago was sustained against the objection of indefiniteness by the Supreme Court.[24] The difficulty of giving a more precise definition is well illustrated by the court's attempt to tell what "dense smoke" means. "The terms used will be understood as commonly employed, and this court will understand by 'dense smoke,' precisely what everybody else does that has ever seen a volume of dark, dense smoke as it comes from the smoke-stack or chimney where common soft or bituminous coal is used for fuel in any considerable quantities."

"In order to constitute a crime, the act must be one which the party is able to know in advance whether it is criminal or not. The criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable. There must be some definiteness and certainty."[25] Two statutes of the state of Texas both held void furnish examples of the use of indefinite and uncertain terms. One prohibited labelling certain feed stuff with a percentage that varied "substantially" from the actual contents. "Evidently," the court said, "different persons might differ as to what would be 'substantially' such larger percentage."[26] The other statute prohibited the operation of motor vehicles 'whose front lamps shall project forward a light of such glare and brilliancy as to *seriously* interfere with the sight of, or temporarily blind the vision of, the driver of a vehicle approaching from an opposite direction."

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[23] See Rock v. Haas, 110 Ill. 528 (1884).
[24] Harmon v. City of Chicago, 110 Ill. 400 (1884).
[25] Tozer v. U. S. (C. C.) 52 Fed. 917 (1892).
[26] Cogdell v. State, 193 S. W. 675 (1917).

In the opinion the court uses this language: "What degree of interference is serious is a matter not fixed by the Legislature; the glare and brilliancy are not described by any standard that is certain, that may be known in advance by the citizen; nor is there by the Legislature any rule fixed for deciding at what point they reach the prohibited degree of brilliancy."[27]

An Indiana Statute prohibited the hauling "over any turnpikes or gravel roads at any time when the same is thawing through, or is by reason of wet weather in condition to be cut up and injured by heavy hauling, a load on a narrow-tired wagon of more than twenty hundred pounds, or on a broad-tired wagon of more than twenty-five hundred pounds." The court in holding the statute void, said:

"There must be some certain standard by which to determine whether an act is a crime or not; otherwise, cases in all respects similar, tried before different juries, might rightly be decided differently . . . because of the difference of conclusions of different judges and juries based upon their individual views of what should be the standard of comparison of tires, derived from their varying experiences, or the opinions of witnesses as to what difference of width of tires would constitute one wagon a narrow-tired wagon and another a broad-tired wagon. The words 'narrow' and 'broad' describe, not certain, but uncertain, comparative widths, and, no standard of comparison being provided by the law, they render the phrases in which they occur uncertain and indefinite."[28]

Almost as properly could objection have been made to the description of another essential element of the crime—the condition of the roads. Whether they are "thawing through or . . . in condition to be cut up and injured by heavy hauling" might well be a matter upon which individual opinion would be at variance.

States regulating the use of motor vehicles have in a number of instances prohibited their operation "at a speed greater than is reasonable and proper." This was held void for indefiniteness by the courts of Georgia[29] and Texas.[30] In Ohio[31] and Nebraska[32] similar provisions were sustained. The Illinois law on this subject makes unlawful the driving of a motor vehicle,

"At a speed greater than is reasonable and proper having regard to the traffic and the use of the way or so as to endanger the life or limb or injure the property of any person. If the rate of speed of any motor vehicle or motor bicycle operated upon any public highway in this State where the same passes through the closely built-up business portions of any incorporated city, town or village exceeds ten (10) miles an hour or if the rate of speed of any motor vehicle or motor bicycle operated on any public highway in this State where the same passes through the residence portions of any incorporated city, town or village exceeds fifteen (15) miles an hour or if the rate of speed of any motor vehicle or motor bicycle operated on any public highway in this State outside the closely built-up business portions and the residence portions within any incorporated city,

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[27] Griffin v. State, 218 S. W. 494 (1920).
[28] Cook v. State, 26 Ind. App. 278 (1901).
[29] Strickland v. Whatley, 142 Ga. 802 (1914).
[30] Solan and Billings v. Pasche, 153 S. W. 672 (1913).
[31] State v. Schaeffer, 96 Ohio St. 215 (1917).
[32] Schultz v. State, 89 Neb. 34 (1911).

town or village exceeds twenty (20) miles an hour or upon any public highway outside of the limits of an incorporated city, town or village if the rate of speed exceeds twenty-five (25) miles per hour, such rates of speed shall be prima facie evidence that the person operating such motor vehicle or motor bicycle is running at a rate of speed greater than is reasonable and proper having regard to the traffic and use of the way or so as to endanger the life or limb or injure the property of any person."

The Supreme Court in sustaining this provision, says: "There can be no question that counsel for plaintiff in error is right in arguing that in creating an offense by a statute which was not a crime at common law such statute must be sufficiently certain to show what the legislature intended to prohibit and punish, otherwise it will be void for uncertainty.

If the law is of such doubtful construction and describes the act denominated as a crime in terms so general and indeterminate as to make the question of criminality dependent upon the opinions of the individuals who may happen to constitute the court and jury, and of such a nature that honest and intelligent men are unable to ascertain what particular act is condemned by the State, the law is incapable of enforcement and will be held to be null and void. The dividing line between what is lawful and what is unlawful can not be left to conjecture. This law, however, the constitutionality of which is questioned, does not leave to conjecture when the statute is violated. If the only provision of section 10 were its first sentence there might be some merit in the argument of counsel that the construction of the statute is subject to conjecture. The section further provides the exact speed, which if exceeded in various classifications of localities shall be prima facie evidence of a violation of the law . . ."[33]

It is obvious that the same standard of preciseness is not possible in all statutes. As an example of the kind of thing which can not be stated in terms mathematically exact, consider the provision in the Criminal Code relating to self-defense.

"If a person kill another in self-defense, it must appear that the danger was so urgent and pressing that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also, that the person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given." [34]

The question then in this, as in all statutes, is not whether the rule of conduct is stated with a certain degree of preciseness, but rather whether the rule is stated as definitely as possible in the particular case.

The defect of indefiniteness may render unenforecable any type of legislative enactment but the courts have been more ready to declare void statutes with penal provisions because of the general rule that such statutes should be strictly construed. But from the standpoint of careful bill-drafting, persons upon whom laws operate are entitled to know clearly and definitely their civil rights as well as criminal. The instances cited have all been criminal statutes which have been declared void but whether or not a law can

[33] People v. Beak, 291 Ill. 449 (1920).
[34] Hurd, 1919, p. 1024.

survive a judicial inspection is not a proper standard for the bill-drafter. That a statute has survived the constitutional objection of indefiniteness means merely that it has satisfied the minimum requirement for legislative enactments. The efforts of the bill-drafter should be toward expressing legislation so lucidly that the objection of uncertainty cannot even be raised.

Attention should be called to one type of legislation which may be said to form an exception to the principle of preciseness. The extension of governmental supervision over the businesses and activities of individuals has enormously increased the amount of regulatory provisions. In fact, so bulky and detailed has this regulation become that a large part of it has been handed over to administrative officials and boards. Section I of Article IV of the constitution vests the legislative power in the General Assembly. This has been construed to mean that the General Assembly cannot divest itself of this power by conferring it elsewhere.[35] But as was said in an early decision in this state: "While the legislature may not divest itself of its proper functions, or delegate its general legislative authority, it may still authorize others to do those things which it might properly, yet can not understandingly or advantageously do itself."[36] It is not a delegation of legislative power, within the meaning of this prohibition, so long as the act determines the policy of the law and prescribes a method for its application, and is final and complete in all its terms and conditions.[37]

[35] People v. Board of Election Commissioners, 221 Ill. 9 (1906); Rouse v. Thompson, 228 Ill 522 (1907).

[36] People v. Reynolds, 5 Gilman (Ill.) 1 (1848).

[37] There are two distinct but related constitutional questions involved in legislation of this character.

1. Does the act attempt to delegate legislative power?
2. Does it permit a power delegated to be exercised arbitrarily by the administrative agency?

The primary election law of 1905 authorized the county central committee of each political party to determine whether candidates for county offices should be nominated by a majority or plurality vote. This was held to be an attempted delegation of the legislative function. (People v. Board of Election Commissioners, 221 Ill. 9.) The determination of this matter is one of the substantial features of election to office and must be determined by the General Assembly. On the other hand, the provisions of a gas safety appliance act exempted from the act, buildings receiving less than a certain volume of gas "unless the conditions under which the gas is used are such as to endanger life or property . . . then in all such cases, at the discretion of said duly authorized officer or officers, all such buildings may be required to be equipped as provided for herein." Unlike the provision in the primary law above stated, this is the kind of a duty which might properly be performed by a public official. The objection is to the method by which the power is conferred. It would be unobjectionable to permit such an official to exercise his discretion whether in a particular instance, conditions require safety appliances *when measured by some fixed standard.* But no fixed rules laid down by the act or required to be formulated, limit in any way the arbitrary power here attempted to be conferred, and the measure was held unconstitutional. (Sheldon v. Hoyne, 261 Ill. 222.)

It may be said, then, that an act to be valid must determine the substantial features and lay down a policy as to those matters which the General Assembly must determine. That having been done, the application of that policy may be vested in agencies if the act either itself lays down regulations which govern equally its application in all cases or requires the agency to adopt rules establishing a standard. (See, also, People v. Kane, 288 Ill. 235; Kenyon v. Moore, 287 Ill. 233; Board of Administration v. Miles, 278 Ill. 174.)

It is apparent that the constitutional question is one of substance rather than phraseology. The policy adopted as the legislative will may necessarily be expressed in general and indefinite terms. On the other hand, an act may be unconstitutional which uses very certain and explicit language in attempting to confer a power which must be exercised by the General Assembly alone. (See Constitution of Illinois, Annotated, pp. 28, 75.)

That is, a statute may lay down general standards or principles which constitute the law and delegate to an agency the application of these principles in particular cases.

Provisions of this character necessarily are couched in flexible and general terms. Rigid expressions do not afford opportunity for the exercise of discretion by those applying the law. Thus the Public Utilities law[38] which vests in a commission general supervision and ratemaking power as to public utilities provides:

"All rates or other charges made, demanded or received by any public utility or by any two or more public utilities, for any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable . . .

Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employes, and the public, and as shall be in all respects adequate, efficient, just and reasonable."

It is apparent from the instances cited that some actions lend themselves to precise definition more readily than others. As was said by the Ohio court in sustaining the general and comprehensive terms employed in the automobile speed law; "Absolute or mathematical certainty is not required in the framing of a statute. Reasonable certainty of the nature and cause of the offense is all that is required. Some offenses admit of much greater precision and definiteness than others, but it is quite obvious that in the case at bar the statute must be sufficiently elastic and adapted to meet all the dangerous situations presented, in order to adequately safeguard the traveling public."[39] Take the distinction between murder and manslaughter. No amount of statutory definition can draw the line so clearly but that one jury might view as murder a homicide which another jury would call manslaughter. The abstract idea only is expressed by the definition in the Criminal Code. By the individual jury's conception of that abstract idea must be measured each homicide. The statement, "In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person" is most general in character and lays down no hard and fast rule. On the other hand, a statute relating to intoxicating liquor can easily draw a sharp line between what liquor falls within and what without its purview. The wartime prohibition act used only the words "no beer, wine, or other intoxicating malt or vinous liquor" and as a result the sale of beer containing 2.75 per cent. alcohol became a crime in some localities but remained lawful in others. Had Federal legislation remained the same, judicial interpretation in time would probably have supplied the legislative omission and fixed the per cent. of alcohol which made a liquor intoxicating. In fact, the Volstead act which came later, defined intoxicating liquor as containing more than one-half of one per cent. The Indiana statute relating to hauling on roads, (stated above) illustrates the kind of definition which can be made exact and also the kind which

[38] Hurd,1919, p. 2336.
[39] State v. Schaeffer, 96 Ohio St. 215 (1917).

can only be stated generally. The width of "narrow tires" and "broad tires" can be fixed by inches and no uncertainty remains. The degree of softness of a road for hauling purposes cannot be so easily defined. It should, however, be the aim of the bill-drafter to make mathematically precise that which can be so made and in all cases to lay down in laws as definite a standard as possible for the guidance of courts and of the public.

A statute is passed as a whole and not as disconnected sections and each part must be construed with reference to every other part or section. Consequently when a word or phrase, is used more than once in a statute a presumption arises that it bears the same meaning throughout. This presumption will govern the construction unless a contrary intention is evident. From this rule of construction two suggestions for drafting can be drawn:

1. The same word should not be employed to convey different meanings;
2. Different words should not be used to convey the same meaning.

In the Illinois statute relating to divorce the word "marriage" occurs with two distinct meanings. Properly employed, it should signify the entering into a legal marital relation. In the following section it also has the meaning of a performance of an illegal marriage ceremony.

"Sec. 3. No divorce shall, in anywise, affect the legitimacy of the children of such marriage, except in cases where the marriage is declared void on the grounds of a prior marriage . . ." [40]

There is no ambiguity, however, nor need for judicial interpretation in this case because the intent to use "marriage" in two senses is obvious. But in Section I of Article V of the Cities and Villages Act relating to the powers of the City Council there is a somewhat ambiguous use of the word "regulate."

Four clauses make use of this word.

95th "To tax, license and regulate secondhand and junk stores."

50th "To regulate the sale of meats . . . and to provide for place and manner of selling the same."

81st "To direct the location and regulate the management and construction of packing houses . . ."

82nd "To direct the location and regulate the use and construction of breweries . . ."

It was contended that the word "regulate" as used in the 95th clause conferred the power to prohibit within certain localities less than the entire territory of the city. But the court held that in the last three clauses cited, in as much as the power to fix the location was conferred by additional language, the General Assembly in those clauses did not regard the power to regulate as including the power to fix the location and "where a word is so used in several clauses as to have a clearly defined meaning, the same word, when used in another clause, will be given the same meaning, in the absence of anything in the context to indicate that the legislature intended it to have a different meaning."[41] In other words, the meaning of "regu-

[40] Hurd, 1919, p. 1119.
[41] People v. Busse, 240 Ill. 338 (1909).

late" is determined by the context in three clauses, and that same meaning will be presumed to have been intended when used elsewhere. Of course if it was intended that "regulate" should have the more comprehensive meaning in connection with junk stores, that intent fails by reason of a non-observance of the rule suggested.

In an Appellate court decision which construes the word "punishment," reference is made to the use of the same word in other acts collected in the Criminal Code. The court says "where such word appears several times in the same chapter of the statute and the sense in which it is used clearly appears in some sections, that may materially aid in determining the sense in which it is used in other sections of the same chapter."[42] Apparently, then, not only should a word be used uniformly to express the same meaning throughout a bill, but care should be observed to make its use harmonize with other related acts which might be looked to by the courts as affording aid in construing it.

The use of "may" and "shall" in imposing duties and vesting discretion: The function of the predicate in a statutory sentence is to confer rights and impose duties. Two distinct questions are involved in the predicate. 1. Does it command or merely permit? Statutes frequently prescribe the performance of certain acts by public officials or individuals without stating the consequences of noncompliance. 2. If it is a command, then what effect will failure to comply exactly, have on rights or proceedings based on the statute? For convenience, a somewhat arbitrary nomenclature is adopted to classify statutes in these regards. If a statute directs (or prohibits) the doing of a certain thing, it is IMPERATIVE; if, however, it imposes a discretion or grants permission, it is PERMISSIVE. If exact performance as prescribed by a statute is essential to the validity of proceedings thereunder, the statute is MANDATORY; if, on the other hand, performance may be varied or omitted entirely, the enactment is DIRECTORY.

The construction of a statute may involve one or the other of these two questions or both. It should be remarked that the fact that there are two distinct questions is not always recognized by courts and text writers. Consequently, the terms employed have been used with varying meanings. Thus, the court in construing a statute which provided that commissioners shall return an assessment roll within forty days of their appointment, discusses whether the provision is "imperative or permissive or directory."[43] The act is clear, in that it directs the manner of a certain procedure. No discretion is vested by it to perform or not to perform. The question is whether if performance is not had as directed, what effect will the variance have on the legality of the assessment.

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[42] Gunning v. People, 86 Ill. App. 174 (1899).
[43] Wheeler v. City of Chicago, 24 Ill. 105 (1869).

Imperative and permissive provisions: Nearly all the Illinois statutes in which these points have been considered by the court have used the auxilliaries "may" or "shall". Frequently, however, the courts in other jurisdictions have construed equivalent phrases such as "is authorized and empowered," or "is the duty," etc.

The usual and grammatical sense of "may" is to grant permission and "shall" (except where expressing futurity) implies a command. "May" and "shall" when used in statutes will be given these meanings by the court unless a legislative intent appears otherwise. Thus "may" has been held to be permissive in a statute, one section of which provided for criminal prosecution and another that "the fines hereinbefore provided for *may* be recovered in an action of debt."[44] "Any person having filed a claim for lien, *may* bring a suit at once (before maturity) to enforce the same" was held to give an option as to time of filing suit.[45] The following provision was held merely to vest permission in the court; "the court may, at the request of either party, require the jury to render a special verdict upon any fact or facts at issue."[46]

But the fact that "may" is used is not conclusive that mere permission was intended to be granted. "The language of the section is permissive in form, but the form of expression in that respect does not determine the question of legislative intent. That form is frequently used where it is plain that the General Assembly intended not merely to grant permission but to establish a right. . . ."[47]

No general rule can be laid down to determine the effect of the use of "may" in all cases. It will be construed to further the intent and purpose of the enactment and this intent will be gathered from a consideration of the act as a whole and, sometimes, from extraneous circumstances. The words of an English court aptly phrase the rule. "The words 'it shall be lawful' confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called on to do so."[48] Perhaps a slightly more definite statement can be made as to the class of provisions which are liable to be construed as imperative. Generally the power (which may be construed to be a duty) is vested in a public official, and equities of the public or of individuals are associated with the exercise of the power. The court has held imperative a statute permitting highway commissioners to reduce the width of roads on petition,[49] and to remove obstructions from roads,[50] and a statute which authorized an

[44] C. W. & V. Coal Co. v. People, 114 Ill. App. 75 (1904).
[45] Dawson v. Black, 148 Ill. 484 (1893).
[46] Kane v. Footh, 70 Ill. 587 (1873).
[47] People v. Commissioners of Highways, 270 Ill. 141 (1915).
[48] Blackwell's case, 1 Vern. 152 (1683).
[49] People v. Commissioners of Highways, 270 Ill. 141 (1915).
[50] Brokaw v. Commissioners of Highways, 130 Ill. 482 (1889).

ordinance to require all owners of lots along a proposed sidewalk to construct within thirty days.[51] In the last case cited, the court says: " 'May' means 'shall' or 'must' whenever the rights of the public or of third persons depend upon the exercise of the power to perform the duty to which it refers; and such is its meaning in all cases where the public duty is imposed upon public officers and the public or third persons have a claim *de jure* that the power shall be exercised. Whenever a statute directs the doing of a thing for the sake of justice or the public good, the word 'may' will be read 'shall.' "

But the two elements found in the cases cited, power vested in an official and equities of the public, are not controlling. A statute providing that "upon the filing of such affidavit, the court may continue such suit," was held imperative.[52] Another which said "the court may, at the request of either party, require the jury to render a special verdict upon any fact or facts at issue," was held merely to vest a permission or discretion with the court.[53] In each case the power is vested in the same official and its exercise affects a litigant in court. All that distinguishes the two statutes is the nature of the act to be performed. In the one case the court views a continuance as a matter of right to parties litigant if they comply with the conditions laid down; in the other a special verdict was deemed not to be a matter of right.

Another type of enactment is illustrated by the two following provisions: "such appeal may be prayed for at any time within 20 days after the rendition of such judgment, order or decree;" "all actions . . . against any county may be commenced and prosecuted to final judgment and execution in the circuit court of the county against which the action is brought." It is quite clear that the permission granted is to pray an appeal or bring suit against a county. There is no command to exercise either of these rights. "May" is used in its grammatical sense in that respect. But if it is desired to exercise the power granted, then it must be exercised in the manner prescribed. In other words, the statute is purely permissive, with certain limitations on the permission granted. Although these are not in fact cases of construing "may" as "shall" the court has so discussed them.[54]

"Shall" like "may" in statutory language is ordinarily given its grammatical meaning. In a few cases, however, it has been construed to be permissive instead of imperative. Thus, the city court act of 1901 provided that "appeals shall be taken in the first instance from the judgments of justices of the peace or police magistrates in the city to the city court." The act also contained a blanket repeal section. Section I of the act provided for concurrent jurisdiction for city courts with circuit courts in appeals from justices of the peace in the city. To hold that "shall" was mandatory and excluded appeals from justices

[51] Pierson v. People, 204 Ill. 456 (1903).
[52] Chicago Pub. Stock Ex. v. McClaughry, 148 Ill. 372 (1894).
[53] Kane v. Booth, 70 Ill. 587 (1873).
[54] James v. Dexter, 112 Ill. 489 (1884); Schuyler County v. Mercer County, 4 Gilman (Ill.) 20 (1847).

of the peace in cities to the county courts and circuit courts, would, in effect, repeal provisions regarding appeals in the County Court Act and the Justice of the Peace and Constable Act and conflict with section I of the statute under consideration. The situation permitted only one construction—that "shall" was permissive and should be read "may."[55] Objection was made to a portion of a drainage act on the ground that it required the jury to return a verdict which "shall produce the total sum of the estimated cost of the proposed work." The validity of the section demanded that "shall" be construed to be not imperative, but permissive. The act is quite clear that the jury's return is to be based on benefits and that there was no intention to require an arbitrary finding based on other facts.[56]

Another statute had a provision, imperative in form, for the removal of certain dams in the Illinois river. From a consideration of the purpose of the act and the history of canal construction by the state, the court arrives at the conclusion that the legislature never intended to command the removal of the dams but merely to authorize it if certain conditions rendered them useless. "Where the rights of the public or of third persons are involved, words in the statute importing permission or authority may be read as mandatory and words imposing a command may be read as permissive.[57]

Apparently there is no rule of construction suggested by these cases other than that a court will disregard the form of the legal predicate when a contrary intent is evident from a consideration of the whole act or where it would lead to an absurdity or work an injustice. In the case of the statute regarding appeals from justices of the peace, the construction adopted for the legal predicate was required to bring the provision into harmony not only with other acts but with other provisions of the same act. A different decision as to the drainage statute would mean a jury verdict dictated by principles not in accord with the constitution and our fundamental ideas of jury trial. In the third case cited, concerning the Illinois river dams, imperative language is changed to permissive because it is not to be thought that the General Assembly intended to destroy state property which had cost a million dollars unless it had become useless.

To insure that a measure will be given the desired construction in this regard, it is necessary to make that intent very clear. It is important to observe these precautions:

1. Employ "shall" and "may" in their correct sense. Never use "shall" to grant permission or "may" to impose a duty.

2. If it is desired to authorize but not to command and the provision is of the kind where a court might think that the rights of somebody or other are involved and demand that the enactment be mandatory, the bill-drafter must reenforce his intent by making clear beyond any doubt by express words that the intent is to con-

[55] Boyer v. Onion, 108 Ill. App. 612 (1902).
[56] Spring Creek Dist. v. E. J. & E. Ry. Co., 249 Ill. 260 (1911).
[57] Canal Commissioners v. Sanitary Dist., 184 Ill. 597 (1900).

fer a discretion or grant permission. In the expression, "the director may, in his discretion" the permissive "may" is strengthened by the phrase "in his discretion." Or a separate sentence may be used to make the intent very clear. "The exercise of this power shall be wholly within the discretion of the director."

The cases reading "shall" as "may" in fact are without value to a bill-drafter, since they represent merely a misuse of "shall" which is corrected by judicial construction. It should not be necessary for the court to rewrite legislation to correct faulty English.

Mandatory and directory provisions: Mandatory and directory provisions are both commands from the law-making body. In both, a duty is imposed or the commission of an act is ordered. The courts have sometimes discussed provisions deemed to be directory as though they were mere grants of authority,[58] whereas they are in fact commands which by judicial construction may be varied or even disregarded. A single instance will serve to illustrate. A statute provides: "One engineer shall be annually appointed by the mayor in the month of April subject to confirmation by the alderman for a term . . ."

It is quite clear that the legislative mandate is that the appointment be made by the persons named during the stated period. But "the result of holding the statute directory is that the power of appointment given to the mayor is to be exercised by him as and when provided by the statute but that if for any reason an appointment is not made by him during the month of April as directed but at some later time, it nevertheless will be a valid appointment."[59]

This is simply a recognition of the fact that statutory regulation must frequently lay down fixed rules even as to trivial and immaterial details. Consequently, the courts have said that as to such matters, some latitude will be permitted, not because the legislature did not intend its directions to be followed but rather because the greater good will result from relaxing somewhat the rigidity of statutory regulations. The court in an early decision in Illinois said: "By a directory statute is not to be understood that no duty is imposed to do the act at the time specified, in the absence of a satisfactory reason for not then doing it, but simply that the act is valid if done afterwards."[60]

The question whether a provision orders or permits some action involves a consideration of legislative intent; whether it is mandatory or directory is generally a question of policy to be applied by the court. Of course, the language employed may give an indication as to the legislative view of the importance of a provision and as such will be a consideration for the judicial construction.

No universal rule can be stated to distinguish directory provisions from mandatory. It is impossible to group all the various

[58] Wheeler v. City of Chicago, 24 Ill. 105 (1860).
[59] Rutter v. White, 90 N. E. 401 (Mass. 1910).
[60] Webster v. French, 12 Ill. 301 (1850).

provisions on different subjects which have been held to be either the one or the other. In each case the court must look to the subject matter, consider the importance of the provision, its relation to the general object to be secured by the act, and the consequence to the rights of the public or individuals that may result from one meaning rather than another.

This is not ordinarily a matter of importance to the bill-drafter. That a court may permit some variation in the minor regulations he has laid down, is not his concern. Nor is it desirable generally that the minor matters and immaterial details of statutory enactments should be so firmly fixed as to be beyond judicial relaxation. Occasionally if it is desired to secure exact compliance with a provision, suitable language can be employed to effect that result.

Mandatory provisions not only contain a command but also include a prohibition against varying the terms of the command. If affirmative language is used to express the provision, the prohibition exists only by implication. If that prohibition is expressed by the use of negative language, the legislative intent that the provision be mandatory is apparent beyond any doubt. The provisions "the commissioners shall return the assessment roll within forty days of their appointment," is affirmative and as to the time of the return was held directory. If the words, "and not thereafter," had been added, it would have been difficult for a court to hold that a valid return could be made after the forty-day period. In passing on this provision, the court said: "There are no negative words used, declaring that the functions of the commissioners shall cease after the expiration of the forty days, or that they shall not make their return after that time."[61]

It has been pointed out that the distinction between mandatory and directory enactments arises from the difference in the results of non-compliance. Therefore, if the consequence or penalty of non-compliance is prescribed, the question as to whether the act is mandatory or directory cannot arise. Thus, in the statute cited above, if a statement follows to the effect that "if no return is made within forty days, the assessment shall be void," or "if no return is made within forty days, the mayor shall appoint other commissioners," it becomes quite clear that the return within forty days is made essential and cannot be waived.

Definitions, the Construction Statute and some miscellaneous matters: Some mention has already been made of the utility of definitions in statutes. Frequently it is desirable either to restrict or qualify the general meaning of a word or to extend that meaning so as to make it more inclusive. Or a word may have a number of different meanings, and it may be desired to have it understood in only one sense. Thus, "bedding" may be used in a geological sense; it is a term used in the construction of buildings; it also means stable-litter for

[61] Wheeler v. City of Chicago, 24 Ill. 105 (1860).

animals to sleep upon. So when the word "bedding" is used in a statute relating to furnishings for beds, it is desirable that it be defined to exclude other meanings.[62]

Many words in common use are not precise and definite in their meanings. The words "knowledge" and "notice", for example, convey only a general idea without exact limits, and as in the Uniform Partnership Act,[63] definitions may be used to give to these words the precise shade of meaning desired. Frequently, however, definitions are used in a somewhat more arbitrary manner for the purpose of including or excluding matter from the general meaning of a word. For instance, "bedding" properly includes sheets, spreads and pillow cases, but the act, above mentioned, which regulates the manufacture and sale of bedding, is intended to apply only to bedding which is stuffed with a filling, such as mattresses, pillows, etc. By definition, therefore, "bedding" is made to mean only that particular kind of bedding. On the other hand, "highway" in common parlance means roads or streets. In the Search and Seizure Act[64] its usual meaning is expanded to include "water course, lake, aerial way, railroad, road, alley, path or way which is open to the use of the public."

When repeated reference must be made to a number of things or persons, it is sometimes possible, after an enumeration has once been made, to make use of a generic term in place of repeating the list each time. Sometimes a word can be arbitrarily employed as a substitute for a number of specified terms or a variety of cases or situations. "Noxious weeds" is used in this manner in an act relating to farm seeds.[65] Care should be observed that the relationship between the term and the class it represents is definitely established. This can be done by the use of a definition of the word or a statement of the way it is employed.

A number of words in frequent use in statutes are defined in an act relating to the construction of statutes.[66] The meaning there given these words is to be applied to them unless "inconsistent with the manifest intent of the Legislature or repugnant to the context." The Construction Statute contains also rules of construction to be observed in the construction of statutes now in force or enacted in the future, unless a contrary intent is evident. Such an act is valuable since it saves the repetition of definitions and rules of construction which otherwise would be incorporated in many statutes. The Construction Statute in Illinois is not as comprehensive as it might be made. Such an act to be really servicable, must be complete and contain all definitions of a general character in legislative enactments and also the most general rules of construction.

Of course, the bill-drafter should be familiar with the provisions of the Construction Statute and avoid the duplication of its contents in individual acts. This would seem so obvious as not to need mention but some of the provisions of the Construction Statute are continually

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[62] Hurd, 1919, p. 1107.
[63] Hurd, 1919, p. 2218.
[64] Hurd, 1919, p. 1248.
[65] Hurd, 1919, p. 56.
[66] Hurd, 1919, p. 2929.

appearing in acts enacted by the General Assembly. The act regulating the manufacture and sale of bedding,[67] enacted in 1919 contains the following provision:

"The word 'person' as used in this act shall be construed to import the plural and the singular as the case demands and shall include corporations, companies, societies and associations."

This provision is contained in language practically the same in the third and fifth clauses of Section 1 of the Construction Statute. The General Corporation Act,[68] a carefully drafted measure, provides in Section 156 that:

"The provisions of this act, so far as they are the same as those existing statutes, shall be construed as a continuation thereof, and not as a new enactment . . ."

Section 2 of the Construction Statute is:

"The provisions of any statute, so far as they are the same as those of any prior statute, shall be construed as a continuation of such prior provisions, and not as a new enactment."

A provision similar to Section 4 of the Construction Statute, saving all rights and claims accrued and penalties incurred under a repealed act, appears frequently in amendatory acts and revisions.[69] To pad statutes with such superfluous provisions is a serious mistake. If the Construction Statute is to serve any useful purpose, the rules laid down there should not be incorporated in each individual measure.

While the statutes quoted offend in the matter of duplicating the rules laid down in the Construction Statute, instances are not infrequent in which statutes wholly disregard these rules and use forms which are made unnecessary. Even if it were not so provided in the Construction Statute, it is a familiar rule of construction that words importing the singular number may be applied to several persons or things and words importing the plural number may include the singular.[70] There is no excuse for the awkward combination of the singular and plural forms of nouns and pronouns such as is found in Section 9b of Division I of the Criminal Code;[71] "any person or persons who shall," . . . "marked with his, her or their name or names," etc.

The Construction Statute also provides that "words importing the masculine gender may be applied to females." The masculine pronouns "he" and "his" should be used instead of the double form "he or she," "his or her." Possibly an exception should be noted to this rule that the masculine form comprehends the feminine. Where a bill treats of matters which have been customarily connected with males and it is desired to include both sexes, it is perhaps safer to add a statement expressly providing that the masculine form is to include the feminine. A Wisconsin statute regulating admission to practice law was held to exclude women because of the use of the

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[67] Hurd, 1919, p. 1107.
[68] Hurd, 1919, p. 722.
[69] General Corporation Act, Section 156, Hurd, 1919, p. 748.
[70] Perkins v. Bertrand, 192 Ill. 58 (1901); Arnold & Murdock Co. v. Industrial Board, 277 Ill. 295 (1917).
[71] Hurd, 1919, p. 972.

masculine pronoun "he."[72] Of course, if a statute applies only to females, it should use feminine pronouns.

The act regulating the practice of nursing[73] was designed to apply to both sexes. As a matter of actual fact, there are practically no registered male nurses. It was felt by those instrumental in the passage of the act that the masculine pronouns, in view of the fact that practically all nurses were women, were undesirable. The feminine forms could not be used because they were not construed to include both sexes. Consequently, a combination of both genders seemed to be the most satisfactory mode of expression. This is an exceptional instance, and even here the correct method probably would have been to employ the masculine forms.

The Construction Act, Section 1, Fifth Clause, says:

"The word 'person' as well as all words referring to or importing persons, may extend and be applied to bodies politic and corporate as well as individuals."

This makes unnecessary the use of the awkward series "person, firm, association or corporation," which is so frequently found in legislation.[74]

Brief mention may be made of a number of minor matters of phraseology which tend to simplify and make legislative language more natural.

1. The connecting word "that" immediately following the enacting clause in the first section of a bill is unnecessary and should be omitted. If the enacting clause is made to precede Section 1 instead of being a part of it, the uselessness of an introductory "that" becomes more apparent, but even if the enacting clause is kept in the first section, the "that" should be discarded. In a few cases in Illinois, sections other than the first section commence with "that."[75]

2. Statutes can be simplified greatly without weakening their effect, by omitting the grouping of synonyms and indirect expressions which tend to make sentences rambling and disconnected. As was said by one text-writer: "A law is usually stronger if it has few words, chosen with care as to their meaning."[76] Too often it is to be feared authors of bills think that the multiplication of synonyms and phrases tend to give a legal smack which adds to the impressiveness. The continued repetition of these useless combinations of nouns, verbs, adjectives and conjunctions finally becomes habitual. The word "will" includes everything that is meant by "testament," but most lawyers join the two in writing a "last will and testament." A legislature cannot authorize an action without giving power, but how many laws "authorize and empower" and "order and direct." The statute books abound with such redundancies as "each and every," "any and all," "parts and portions," "be and the same are," "for and during," "period and term," "do and perform," "acts and things," "full and

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[72] In re Goodell, 39 Wis. 232 (1875).
[73] Hurd, 1919, p. 2048.
[74] Commercial Insurance Co. v. Mehlman, 48 Ill. 313 (1868); Ochs v. People, 124 Ill. 399 (1888).
[75] Hard road act, Hurd, 1919, p. 2642; Chicago Municipal Court Act, Hurd, 1919, p. 925.
[76] Jones, Statute Law Making p. 123.

complete," "by and with" and "shall have power and it shall be his duty to." A law does not become any stronger because it says that it "shall be in full force and effect," rather than simply that it "shall be in force." These and many other similar pairs and phrases can be replaced by one word or a more simple term and they should not be tolerated in careful legislation.

3. There are some words like "hereby," "said," "aforesaid," "such," "any," whatsoever" and "wheresoever" which appear frequently in legal expression. Generally they are unnecessary and do not add anything by way of definiteness. It is just as effective to say "whoever, having a former husband or wife living, marries another person, *is* guilty of bigamy," as to say "whoever, etc., *shall be deemed* guilty of bigamy." "Shall be construed to mean" is no more convincing than the word "means."

Commands and permissions are frequently stated in an indirect manner: "it shall be the duty," "is authorized," etc., for which may be substituted such words as "shall," "must" or "may."

4. Ordinarily, where the creation of a simple crime is not a subordinate part of a broader act, there is no necessity for reciting that the thing prohibited is unlawful and that a person violating that prohibition is subject to a penalty. It is sufficient to provide that a person committing such an act is guilty of an offense and fix the penalty.

Thus, an act forbidding the portrayal of hangings, lynchings and burnings of human beings, reads:

"It shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale, or advertise or present or exhibit in any public place in the State, any publication or representation by lithograph, moving picture, play, drama or sketch representing or purporting to represent any hanging, lynching or burning of any human being. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars." [77]

This can be more simply stated by providing that "whoever manufactures, . . . is guilty of a misdemeanor and shall be punished . . ." The Criminal Code comprises a miscellaneous collection of offenses and criminal provisions which are being changed and added to continually, and anything which tends to harmonize and unify its pages is desirable.

When the creation of offenses is incidental to the main purposes of a bill, it may be convenient to prohibit specific acts or require that certain regulations be complied with, and group the penalty provisions in a later section. Section 43 of the Motor Vehicle Act is an example of the grouping of penalty provision in one section.

"Any person wilfully violating the provisions of this Act shall, except as otherwise provided herein, upon conviction, be fined in a sum not to exceed the amount hereinafter set forth.

For the violation of sections 8, 14, 16, 17, 18, 19, 20, 21, 27, 28 and 40, or any of them, twenty-five dollars.

For a violation of section 22, two hundred dollars.

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[77] Hurd, 1919, p. 1041.

For the violation of any section or provision for which no specific penalty is provided, one hundred dollars." [78]

Where a prohibition is expressed apart from the penalty provision, it is generally better to say "no person shall" rather than "it shall be (is) unlawful to."

There is a general penalty provision for misdemeanors in the Criminal Code which reads as follows:

"Where the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor, and may be punished by fine not exceeding $100, or imprisonment in the county jail not exceeding six months, or both, in the discretion of the court."[79]

A misdemeanor for which no penalty is specifically provided may be punished under this provision. This plan is followed in the Criminal Code of New York. In this state, however, it has been customary to attach the penalty clause to each offense, and it might not be wise to omit the penalty provision in statutes creating misdemeanors. But the New York method should be considered when a revision of the Criminal Code is made, because the use of a general penalty provision undoubtedly tends to standardize penalties.

5. There is some tendency to avoid pronouns in statutory language. This is commendable when a lack of clearness might otherwise result, but there is no objection to their use so long as their position indicates definitely their antecedents.

6. The conjunctions "and" and "or" are used inaccurately in popular language frequently, and also, in a less degree, in statutory expression. The courts recognizing this inaccuracy, have been obliged frequently to adopt a loose construction in order to effectuate what appeared to be the legislative intent. "While they are not treated as interchangeable, and should be followed when their accurate reading does not render the sense dubious, their strict meaning is more readily departed from than that of other words, and one read in place of the other in deference to the meaning of the context."[80] The court, though, in another case, refused to read "and" as "or" when that construction was urged. "It is no doubt true, that where the sense and purpose of a statute demand it, the conjunction "and" may be construed as though it were written "or;" but in the absence of some such necessity, the words of a statute are not to be so changed."[81]

As in the case of "may" and "shall," a readiness on the part of the courts to depart from the general meaning of words, is a source of danger to the bill-drafter, since he, even when he has used such terms accurately, must guard against the possibility of a different construction than that intended. In the first place, there should be no careless use of conjunctions. As was mentioned in a discussion of provisos, "provided" is sometimes inaccurately used to join a simple independent provision. If there remains

[78] Hurd, 1919, p. 2634.
[79] Hurd, 1919, p. 1057.
[80] Sutherland, Statutory Construction, Sec. 252; People v. VanCleave, 187 Ill. 125 (1900); Boyles v. McMurphy, 55 Ill. 236 (1870).
[81] People v. Lee, 112 Ill. 113 (1884).

a possibility of a conflict of ideas between the conjunctions used and the context, the conjunction may be strengthened by other words to avoid the possibility of the context overriding the conjunction. Thus "either . . . or" may be employed if the idea is disjunctive, and if conjunctive "both . . . and" or "and also."

7. The Illinois statute book abounds with sample forms for bonds, ballots, reports, affidavits, etc., given for the most part for the guidance of governmental officials. In some cases, this is an unnecessary detail which may be left to the discretion of the office administering the law. A bounty act of 1877 provides:

". . . whereupon the clerk of said board, shall administer to said person, the following oath or affirmation, to-wit:

You do solemnly swear (or affirm as the case may be), that the scalp or scalps here produced by you was taken from a wolf or wolves killed and first captured by yourself within the limits of this county and within the sixty days last past."[82]

This could have been simplified greatly (as was done with later bounty acts) by merely requiring an affidavit and stating its substance.

Section 5 of an act providing for visitation of children placed in family homes contains a lengthy form of report to be made to the Board of Public Charities by its visitors.[83] The Search and Seizure Law[84] which in a great many respects illustrates the things a bill drafter should avoid, contains six forms. It has forms for carrier's records, statement by consignees to carrier, application for purchase from druggist, complaint for search warrant, search warrant and permit issued by the Attorney General. Generally, when an action or proceeding is entrusted to one officer or department of the state, it is sufficient to give that officer or department general instructions as to forms. When, however, the duty is imposed upon a number of officials, throughout the state, if uniformity is desired, it is necessary to set out in detail the forms to be used.

8. Occasionally in statutes the enumeration of several persons or things is followed by a dependent clause. Section 4 of the Workmen's Compensation Act of 1911[85] has the words, "If the employe leaves any widow, child or children, or parents or other lineal heirs to whose support he had contributed within five years previous to the time of his death . . ." Such an expression is capable of two interpretations;—the dependent clause may be held to qualify each member of the list preceding or it may be limited to the last one. In the instance cited the Appellate court adopted the first construction and held that the clause modified the word "parents."[86] By care in the matter of phrasing, an ambiguity of this kind can be avoided.

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[82] Hurd, 1919, p. 161.
[83] Hurd, 1919, p. 279.
[84] Hurd, 1919, p. 1248.
[85] Laws, 1911, p. 315.
[86] Erickson v. American Well Works, 196 Ill. App. 346 (1915).

PUNCTUATION.

The matter of punctuation in statutes formerly was unimportant since the early rule of construction was that statutes should be read without breaks or stops and that whether words belong to any particular branch of a sentence is to be determined from the consideration of the entire act.[87] But inasmuch as bills very generally are printed with full punctuation before legislative action, the courts have modified to some extent the old rule which wholly disregarded punctuation marks. The Supreme Court of Illinois has said: "Section 13 of Article IV of the constitution of 1870 provides: 'Every bill shall be read at large on three different days, in each house; and the bill and all amendments thereto shall be printed before the vote is taken on final passage.' The punctuation of a bill so adopted cannot be said to be the mere work of the engrosser or the public printer. The punctuation is rather a part of the act as adopted by the General Assembly, and while it remains subordinate to the text it may be of material assistance in determining the legislative intent. Certainly it should not be disregarded unless upon an inspection of the whole act or section involved it is apparent the punctuation operates to vary the true sense and meaning of the enactment."[88]

In a later case, the court in construing the words "Board of County Commissioners" in Section 17 of Article VI of the constitution, relies largely on the fact that these words are enclosed in quotation marks. "The quotation marks add to the preciseness of expression and indicate an exact transfer of the words from some other place."[89]

As compared with the text, punctuation still remains relatively unimportant. But good draftsmanship will observe grammatical rules in this regard not only to avoid introducing an ambiguity but also because correct punctuation is a valuable aid to fortify and make clear the legislative intent.

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[87] Perteet v. People, 65 Ill. 230 (1872).
[88] Commissioners of Highways, v. Ellwood, 193 Ill. 304 (1901).
[89] People v. McCormick, 261 Ill. 413 (1914).

EFFECT OF GENERAL PROVISIONS RELATING TO PARTIAL INVALIDITY, LIBERAL INTERPRETATION AND REPEALS.

Partial invalidity section: It is quite common to incorporate in bills a section providing that if any part of the act is declared unconstitutional, that shall not affect the validity of the remainder if it can be given effect without the invalid portion. This is merely an expression of a rule of construction which is recognized by the courts. In People v. Knopf[90] the court said: "The fact that a part of the act is unconstitutional does not require that the remainder shall be held void, unless all the provisions are so connected as to depend upon each other. The constitutional and unconstitutional provisions may even be contained in the same section and yet be perfectly distinct and separable, so that the first may stand though the last fall. . . . If, when the unconstitutional portion is stricken out, that which remains is complete in itself and capable of being executed wholly independent of that which was rejected, it must be sustained."

The valid part, to be given effect, must constitute a complete act and be in accord with the legislative purpose as determined from the whole act and be such that the court can say that the legislature would have passed it with the invalid parts eliminated.[91] It is often extremely difficult for a court to say that, if the invalid portions are eliminated, the balance of the act standing alone accomplishes the legislative purpose. In such a case, it might be thought that a statement to the effect that the invalid portion shall not defeat the remainder, would aid the court by indicating the legislative desire. It is doubtful, however, whether such is the result.

The Public Utilities Act of 1913 provided for the regulation of public utilities except those owned by municipalities. A companion bill which was passed at the same session of the General Assembly regulated the public utilities exempted from the general act. It was contended that the exception in the Public Utilities Act in favor of municipally owned public utilities was unconstitutional but that the act could be given effect with the exception stricken out. Section 83 provided that "if any section, subdivision, sentence or clause of this

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[90] People v. Knopf, 183 Ill. 410 (1900); see also Cooley, Constitutional Limitations 178.

[91] C. B. & Q. R. R. Co. v. Jones 149 Ill. 361 (1894); Springfield Gas Co. v. Springfield, 292 Ill. 236 (1920); People v. City of Rock Island, 271 Ill. 412 (1916); Joel v. Bennett, 276 Ill. 537 (1917).

act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act." Notwithstanding this saving clause the court held that the plan of the General Assembly was for one scheme of regulation for privately owned public utilities and another for those owned by municipal corporations and that the Public Utilities Act with the exception stricken out was not an expression of the legislative will and would have not received the approval of the General Assembly. "Section 83," the court says, "was not intended to nullify any rule of statutory construction and must receive a construction consistent with the rules of constitutional law. While this section may be some indication of legislative intention, yet in construing it, we must give due consideration to the rules heretofore laid down by this court in the interpretation of statutes." (Inasmuch as the majority opinion held the exception as to municipally owned public utilities valid, the decision on this point is *obiter dictum*.) A dissenting opinion takes the view that the legislative plan was to create a commission to regulate public utilities and that the inclusion of those owned by municipalities did not destroy that scheme although it modified it in that detail.[92] In a recent case in which the court held unconstitutional the primary election law of 1919 it was contended that the clause repealing the prior primary act was valid and effective regardless of the invalidity of all other portions of the act. Section 80 of the act contained a partial invalidity clause which provided that the invalidity of any portion should not affect the validity of any other portion which could be given effect without the invalid part. The court says: "The provision of Section 80 is without any effect in aid of the plaintiff in error's contention for the reason that it merely states the uniform rule of the courts, which upholds every valid portion of an act which can be operative and effective without the portion which is declared invalid." The court then considers whether it was the legislative intent that the repealing clause should in all events be valid and decides that this provision was merely intended to clear the way for the new act and consequently was dependent upon it.[93] About all that can be said for a "partial invalidity" provision is that it furnishes a basis for a decision if the court thinks that the valid portion should be sustained and if not, it can be disregarded.

The difficulty as to a partial invalidity clause is that its generality affords no real light on the legislative intent as to particular portions of an act. If, however, a contemplated measure should contain separable parts of recognized doubtful constitutionality, and a statement in the act to the effect that the invalidity of a specified portion should not affect the remainder, the court would probably attach considerable weight to this expression of legislative desire. However no instance of such a particular reference in a partial invalidity clause is known.

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[92] Springfield Gas Co. vs. Springfield, 292 Ill. 236 (1920).
[93] People v. Fox, 294 Ill. 263 (1920).

Liberal interpretation: Another provision of a general nature relating to construction is the statement to the effect that the act shall receive a liberal interpretation to carry out the purpose expressed therein. To effectuate the intention of the legislature and secure the most beneficial operation is a familiar rule of construction; one, however, which is not supreme but which must be applied along with many others which may govern in particular instances. In the case of certain kinds of statutes such as penal measures and acts in derogation of the common law or property rights, other principles control and require a strict construction.

The provision for liberal interpretation is, therefore, of doubtful value. As in the case of partial invalidity clauses, it may be referred to by the court in support of a decision which would have been the same without such a provision, but in a case where other principles of construction must control, it is disregarded. Thus, an act incorporating a theological seminary granted an exemption from taxation as to all property "belonging to or appertaining to said seminary." The section following provided that the act "shall be construed liberally in all courts for the purpose therein expressed." But this provision was not permitted to override the general rule that laws exempting property from taxation are to be strictly construed and all doubts resolved in favor of the public. The court said: "We do not think this language was intended to or could be held to change or qualify the general rules of construction applicable to the section under consideration . . . In determining what purpose is expressed in the section, resort must necessarily be had to the general rules for considering such laws.[94]

But if the courts are not disposed to give much weight to a general provision for liberal construction, such a provision directed toward a particular action or proceeding would doubtless be given effect. There are a number of such provisions in the laws of Illinois. Section 18 of the Illinois Securities Law[95] provides with regard to the filing of statements or documents by the Secretary of State and suit to compel such act, that "merely technical irregularities in the procedure of the Secretary of State shall be disregarded. . . ." The Public Utilities Act, Section 83[96] has a similar provision. "A substantial compliance with the requirements of this act shall be sufficient to give effect to all the acts, orders, decisions, rules and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto."

Repeals: Statutes frequently provide that "all acts and parts of acts in conflict herewith are repealed," without specifying particularly the statutes which are to be affected. Inasmuch as the Supreme Court has repeatedly said that where a subsequent statute

[94] People v. Chicago Theological Seminary, 174 Ill. 177 (1898).
[95] Hurd, 1919, p. 2672.
[96] Hurd, 1919, p. 2357.

is repugnant to a former statute, or inconsistent with it, a repeal of the earlier statute by the subsequent one will be implied,[97] it is difficult to understand how such a provision can add anything to the general rule. This is the view of the Supreme Court. "While the insertion of a general provision in a statute declaring a repeal of all inconsistent acts or parts of acts (without naming any particular act) implies that the new statute is to some extent repugnant to certain laws theretofore enacted, the insertion of such a general repealing clause is generally held to add nothing to the repealing effect of the act. Logically, such a general repealing section adds nothing to the language or meaning of the act and takes nothing from it. All prior conflicting laws and parts of laws are impliedly repealed by conflicting provisions of the law enacted."[98]

In view of such a pronouncement by the Supreme Court, the use of a general repealing clause is not advisable. The great difficulty in connection with repeals by implication is the determination whether an irreconcilable conflict exists between a subsequent act and a prior act or a part of the prior act. A general repealing clause fails to disclose the legislative purpose as to an earlier statute and thereby adds to the burden of construction a question which should properly be settled by the law-making body. Whether a proposed measure necessitates or makes desirable the repeal of an earlier act should be determined by the bill-drafter. And if the repeal of an act is necessary or desirable, it should be accomplished by a specific repeal provision which names the act repealed. The blanket repeal clause is a slip-shod and inefficient substitute which should not be tolerated in careful legislation.

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[97] Lang v. Friesenecker, 213 Ill. 598 (1905); Merlo v. Johnston City and Big Muddy Coal Co., 258 Ill. 328 (1913); People v. Wabash Railroad Co., 276 Ill. 92 (1916).

[98] Hoyne v. Danisch, 264 Ill. 467 (1914); People v. City of Rock Island, 271 Ill. 412 (1916).

PRACTICAL FACTORS AFFECTING DRAFTSMANSHIP.

In the construction of statutes courts look primarily to the language employed. But the whole purpose of judicial construction—the fundamental rule—is to ascertain and give effect to the legislative intent, however expressed. Consequently courts may look beyond the words of a particular section or act to other considerations which may disclose the desire and purpose of the law-making body. The result may be to extend or restrict the effect of the statutory language, or even to nullify its literal purport and substitute therefor a meaning in harmony with what is deemed the purpose of the measure. It is true that the courts have held that, "The meaning and intent of the legislature must be ascertained from the words employed, and where there is no ambiguity there is not room for construction. 'It is not allowable to interpret what has no need of interpretation, and, when the words have a definite and precise meaning, to go elsewhere in search of conjecture in order to restrict or extend the meaning.' "[99] Or as the United States Supreme Court has tersely phrased it,—"the province of construction lies wholly within the domain of ambiguity."[1] But because the mind of the legislator cannot foresee and provide for every conceivable situation and because complex trains of thought must be conveyed by the imperfect and approximate symbols of words, every statute in some aspects presents the necessity for construction. As a matter of fact, resort is had to considerations other than the particular language even when that language has a well-defined meaning. This appears from the statement of the court in the case above cited. "In the interpretation of statutes, words are to be taken in their ordinary meaning in general or popular use, unless . . . it is apparent from the whole law and other laws *in pari materia* that a different meaning was intended."[2] Therefore, it is not enough for the bill-drafter to seek merely a clear mode of expression, but he must take into account such other matters as may weigh with the court in considering his language.

It is a familiar principle of construction that statutes are to be construed as a whole. The import of a word, a sentence or a section may be changed when it is considered not independently but as a subordinate part of an act, all of which refers to a single

[99] Chudnovski v. Eckels, 232 Ill. 312 (1908).
[1] Hamilton v. Rathbone, 175 U. S. 414 (1899).
[2] Chudnosvki v. Eckels, 232 Ill. 312 (1908).

subject and seeks to effect only one purpose.[3] The Supreme Court in one instance uses the following language: "But, as already observed, to construe and enforce this section according to its literal terms would, in all cases of the kind supposed, defeat that class of attachment liens which the act taken as a whole manifestly intended to protect."[4] And in construing a section of the Road and Bridge Act, the court said: "The impression upon the reading of the section certainly is that the extension of the tax is to be upon the assessment of the previous year. Such seems to be the literal reading. But for the ascertaining of the real meaning, we are not to be confined to the words employed, but may look to the former law, and to other statutory provisions."[5] There are many other decisions in Illinois to the effect that "the several provisions of a statute should be construed together in the light of the general objects and purposes of the enactment, and so as to give effect to the main intent, although particular provisions are thus construed not according to their literal meaning."[6]

In the search for the legislative purpose in enacting a measure, the court will consider what the law was at the time of its enactment. Whether the law at that time was statutory or the common law, it furnishes a guide as to the reason for the enactment since the effect of the enactment must necessarily be to change or amend the legal situation as it existed before. That this is regarded as an important aid to construction is evidenced by this statement from the Supreme Court. "It is universally conceded that one of the most efficient means in ascertaining the legislative intent in the adoption of a new statute is to consider it with reference to the state of the law before its adoption, and particularly with reference to the previous legislation on the same subject. A passing notice, therefore, of some of the previous legislation with respect to the granting of licenses for the sale of intoxicating liquors, may aid us somewhat in our present inquiries."[7]

The "state of the law" is one fact of several which may be considered as affording an indication of the motive in the passage of an act. Other circumstances which are connected with an act, the mischief which it recognizes and the remedy sought, all may be looked to as indicative of the legislative will. "In determining the meaning of a statute, a court will have regard to existing circumstances, or contemporaneous conditions, and also to the object sought to be obtained by the statute, and the necessity or want

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[3] An act of 1919 (Hurd, 1919. p. 853) authorizing county memorials for soldiers and sailors contains an example of poor coordination in the provisions relating to the referendum feature. Section 1 has these provisions. "No ballot which has not a cross opposite the word "yes" or "no" shall be counted either for or against the proposition.

If a majority of the votes cast at such election are in favor thereof . . ." The second expression has been held to mean a majority of the highest total votes cast for the candidates for any office. In other words a ballot not marked is, in effect, counted against the proposition. The two statements (in view of the court's construction of the second one) are contradictory and inharmonious.

[4] Hill v. Harding, 93 Ill. 77 (1879).

[5] Wabash, St. Louis & Pacific Ry. Co. v. Binkert, 106 Ill. 298 (1883).

[6] People v. City of Chicago, 152 Ill. 546 (1894).

[7] Wright v. People, 101 Ill. 126 (1881).

of necessity for its adoption."[8] "In order to ascertain the true spirit and import of an act, the courts may also consider the mischiefs such act was designed to remedy."[9] "In construing statutes we must look to the intention of the law-maker, and one of the means of ascertaining the intention is to look to the mischief that existed under the old law, as well as to the provisions adopted to remedy the evil."[10]

To what extent the court will consider conditions and facts relating to a measure is evidenced by the opinion of the court in construing the language of an act creating sanitary districts. Section 23 of that act reads in part: "The district constructing a channel to carry water from Lake Michigan of any amount authorized by this act . . . shall remove the dams at Henry and Copperas Creek in the Illinois river, before any water shall be turned into the said channel." The court reviews the building of the dams by the state at an expense of a quarter of a million dollars, various measures for their repair and preservation, their beneficial effect on navigation on the Illinois river and decides *from these outside facts* that the legislature did not intend what the language plainly expresses, i. e. the removal of the dams, but intended merely to permit their destruction if it became necessary.[11]

The effect of the prior status of the law upon a subsequent statute is expressed by two rules of construction, both of which embody the same principle. (1) If the prior existing state of the law was determined by the common law, a statute in derogation thereof will be strictly construed so as not to alter the common law farther than the statutory terms expressly declare.[12] (2) A statute must be construed with reference to the whole system of which it is a part. Statutes relating to the same subject should be construed *in pari materia* as though forming one body of law and seeming inconsistencies should be so construed, if possible, as to give to each its appropriate effect and operation.[13] The second rule, in other words, is that the law does not favor repeals of statutes by implication but will adopt a construction which will reconcile the provisions of each. This principle, then, is apparent in the construction of a statute, whether it supersedes another act or the common law, that unless it necessarily by its terms alters or displaces the prior law, that prior law will influence and modify the construction of the subsequent act so as to permit both to stand.

In some instances, the construction of an act itself is not influenced by other laws, but the situation to which it relates is affected or controlled by other statutes so that the ultimate result is not

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[8] Hawes v. City of Chicago, 158 Ill. 653 (1895); People v. Kipley, 171 Ill. 44 (1898); People v. Harrison, 191 Ill. 257 (1901).

[9] Soby v. People, 134 Ill. 66 (1890); Bobel v. People, 173 Ill. 19 (1898).

[10] Ball v. Chadwick, 46 Ill. 28 (1867); People v. Wabash, St. Louis & Pacific Ry. Co., 104 Ill. 476 (1882).

[11] Canal Commissioners v. Sanitary District, 184 Ill. 597 (1900).

[12] Mackin v. Haven, 187 Ill. 480 (1900); Canadian Bank of Commerce v. McCrea, 106 Ill. 281 (1882); Turnes v. Brenckle, 249 Ill. 394 (1911).

[13] L. S. & M. S. Ry. Co. v. Chicago, 148 Ill. 509 (1893); Devous v. Gallatin County, 244 Ill. 40 (1910); South Park Commissioners v. First National Bank, 177 Ill 234 (1898).

according to the statutory language. An illustration will make this clear. In 1919, the General Assembly amended Section 189 of the School Law to give relief to school districts by permitting them to levy a higher per cent tax rate. The law now reads that by a referendum vote 2% may be levied for educational purposes. But in some districts, notably Chicago, the scaling of this tax levy under the Juul law[14] nullified this increase and prevented the desired relief. Any tax levy not expressly exempted from the provisions of the Juul law may be affected in counties where the aggregate of tax rates is high. The Civil Administrative Code, Indeterminate Sentence Act, and a large number of other statutes all operate generally in such manner as to affect other particular measures.

Sometimes statutes are enacted which have already received a judicial construction. This may be done by the legislature re-enacting an earlier act or by adopting a statute of another state which has been considered by the courts of that state. In either case, the judicial decisions are generally to be taken as a part of it. In the case of re-enactments which substantially follow the language of an earlier act, it is presumed that the legislature had in view the construction which the court placed on the earlier act and adopted such construction as the true and intended construction to be placed on the subsequent one.[15] "The court will not, however, follow this rule blindly where the language of the new act, when construed in the light of the context, indicates a different legislative intention."[16]

A somewhat similar principle obtains in the case of statutes adopted from other states. "In adopting the statute of another state it is presumed that our General Assembly intended that it should receive the construction given it by the courts of the state from which it was adopted, previous to its adoption, unless such construction is in conflict with the spirit and policy of our laws."[17]

There is no such thing, then, as a wholly independent statute, unrelated to other acts and speaking by its words alone. Other laws, circumstances, judicial decisions all form the background which gives form and meaning to a measure. Even the words themselves take their import from these outside considerations. In a decision cited above[18] the court said: "In determining what is meant by the expression 'corporate authorities of any town,' reference may be made to acts of the legislature, passed from time to time upon the subject of parks and park commissioners." In the first place, a bill should be constructed as a whole, each part harmonizing with the others and the whole act working single-mindedly toward a definite purpose. Not only that but it should be co-ordinated to take its proper place in the whole system relating to the general subject of which it forms a part. Only painstaking study and investigation in the field of legislation in

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[14] An Act concerning the levy and extension of taxes. Hurd, 1919, p. 2543.
[15] McGann v. People, 194 Ill. 526 (1902); Kelley v. Northern Trust Co., 190 Ill. 401 (1901).
[16] Atton v. South Chicago City Ry. Co., 236 Ill. 507 (1908).
[17] Rhoads v. C. & A. R. R. Co., 227 Ill. 328 (1907); Re Qua v. Graham, 187 Ill. 67 (1900); People v. Griffith, 245 Ill. 532 (1910).
[18] South Park Commissioners v. First National Bank, 177 Ill. 234 (1898).

which it is designed to operate can equip the bill-drafter to accomplish this even moderately well. And to succeed perfectly is beyond the limits of human skill. Legislation from other jurisdictions should always be considered in connection with the construction placed on it by the courts of those jurisdictions since that meaning generally attaches to it when adopted in this state.

AMENDATORY LEGISLATION.

In drafting a bill it must be determined whether the desired result can be attained by an amendment to an existing statute or whether the enactment shall take the form of an independent act. The bulk of present-day legislation is directed toward the removal of defects and the making of improvements in existing statutory law. Only occasionally is a new field opened for legislation, and a measure enacted which is unrelated to other statutes. It is important not only that a provision be well constructed to accomplish the immediate ends desired but also that it take its appropriate place in the system of which it is a part, and that it leave the whole legislation relating to the particular subject in the best possible form. Statutes which are amendatory either in form or substance present some distinct problems both constitutionally and from the standpoint of draftsmanship.

Amendment by reference: The constitution provides that "no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act."[19] The early construction, placed upon this provision by the Supreme Court limited its application to acts expressly purporting to amend earlier laws, i. e., statutes amendatory in form.[20] Later the construction was extended to apply to acts amendatory in substance.[21]

As applied to statutes which expressly purport to amend prior laws, this provision entails no difficulties for the bill-drafter. But

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[19] The reference is to Article IV Section 13 of the constitution of 1870. The Constitutional Convention now in session has adopted a proposal which would replace this language with the following provision.

"No Act shall be revived by reference to its title only. Any act expressly purporting to amend a section or sections of an earlier law, shall set forth at length the section or sections as amended."

The purpose of this change in the language is to limit the constitutional provision to express amendatory acts and to exclude statutes which are merely amendments in effect.

[20] People v. Wright, 70 Ill. 388 (1873); Timm v. Harrison, 109 Ill. 593 (1884); School Directors v. School Directors, 135 Ill. 464 (1891); People v. Loeffler, 175 Ill. 585 (1898).

[21] People v. Knopf, 183 Ill. 410 (1900); People v. Election Commissioners, 221 Ill. 9 (1906); Badenoch v. City of Chicago, 222 Ill. 71 (1906); People v. Crossley, 261 Ill. 78 (1913); People v. Stevenson, 272 Ill. 325 (1916); Board of Education v. Haworth, 274 Ill. 538 (1916).

An amendatory statute might comply with the constitutional provision as to one section by setting it out as amended and yet in effect by its substance amount to an amendment of some other section or act which was not set out at length. This would make the amendatory act objectionable from a constitutional standpoint. See Galpin v. City of Chicago, 269 Ill. 27 (1915).

by its extended construction it imperils much legislation and leaves many statutes in doubt until the Supreme Court has passed upon their constitutionality. The court has of necessity recognized that "it cannot be held that this clause of the constitution embraces every enactment which, in any degree, however remotely it may be, affects a prior law on a given subject for, to so hold, would be to bring about an evil far greater than the one sought to be obviated by this clause."[22] And quoting the Supreme Court of Michigan in People v. Mahoney, 13 Mich. 484, the court continues: "If, whenever a new statute is passed, it is necessary that all prior statutes modified by it, by implication, should be re-enacted and published at length as modified, then a large portion of the whole code of laws of the state would require to be republished at every session, and parts of it several times over, until, from mere immensity of material, it would be impossible to tell what the law was." Quite obviously this construction must be limited to statutes which materially affect prior acts. The difficulty, however, is that no rule can be formulated, no standard fixed by which it is possible to know whether a particular measure falls within or without the limits of this construction. The proposition as stated by the Supreme Court, only needs to be quoted to show how indefinite and vague these limits are.

"(1) An act which is complete within itself and does not purport, either in its title or in the body thereof, to amend or revive any other act, is valid even though it may by implication modify or repeal prior existing statutes.

(2) An act, though otherwise complete within itself, which purports to amend or revive a prior statute by reference to its title only, and does not set out at length the statute amended or revived, is invalid, regardless of all other questions.

(3) An act which is incomplete in itself and in which new provisions are commingled with old ones, so that it is necessary to read the two acts together in order to determine what the law is, is an amendatory act and invalid under the constitution, and it is unimportant, in such case, that the act does not purport to amend or revive any other statute."[23]

There being no means of determining beyond question whether a particular act offends in this regard, prudence demands that the bill-drafter steer as wide a course as possible from this danger zone. He will not, of course, frame as an independent act a measure which has no purpose whatever except to correct some fault or make a change in a prior law. A Washington statute provided that there should be exempt from execution and attachment in favor of every householder, personal property to the amount of $1,000, in addition to the property exempt under section 486 of the code. This is clearly objectionable[24] and can easily be avoided.

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[22] Timm v. Harrison, 109 Ill. 593 (1884).

[23] People v. Crossley 261 Ill. 78 (1913). For a review of the decisions of the Supreme Court and a discussion of this subject see Constitutional Conventions in Illinois and Constitution of the State of Illinois, Annotated.

[24] Copland v. Pirie, 26 Wash. 481 (1901).

On the other hand, when an act apparently attempts a complete treatment of a subject, its effect on other statutes becomes of less significance and the danger of unconstitutionality is more remote. Thus, if the only purpose of an act should be the abolition of the State Public Utilities Commission and the vesting its powers and duties in another board or department without complying with this constitutional provision, possibly it would be objectionable. But when that amendment is incidentally effected by an act which has for its purpose the complete reorganization of the state government, such as is done by the Civil Administrative Code, doubtless this act would not be held to be within the rule.

The Civil Administrative Code suggests another point of interest in drafting acts which affect to some extent prior laws. If the measure in question operates to amend several acts rather than only one, apparently the court will be less inclined to hold it within the constitutional provision. Whether the fact that an act affects a number of law indicates a purpose separate and distinct from amending any one of them or whether the court simply relaxes the rule in the face of the "far greater evil" of requiring the reenactment of a large number of laws, in several cases the court has refused to apply the rule to acts of this character.[25]

Incorporation by reference: Although the contention has been made that the adoption of certain provisions of one act into another act by a mere reference amounted to an amendment of the prior act, the court has repeatedly held otherwise and declared that incorporation by reference did not violate the provision in Article IV, Section 13 of the Constitution.[26]

The effect of such reference is the same as though the statute or provisions adopted had been incorporated bodily into the adopting statute. The reference may be to a particular statute by its title or it may be to the law generally which governs a particular subject. Both references accomplish the incorporation of the provisions of the prior act but with different results as to subsequent amendments to the adopted statute. "An act which adopts by reference

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[25] People v. C. & W. I. R. R. Co., 256 Ill. 388 (1912); People v. Van Bever, 248 Ill. 136 (1911).

[26] Culver v. People, 161 Ill. 89 (1896); City of Charleston v. Johnston, 170 Ill. 336 (1897); People v. Crossley, 261 Ill. 78 (1913); People v. Stitt, 280 Ill. 553(1917); Zeman v. Dolan, 279 Ill. 295 (1917).

Inasmuch as this constitutional provision forbids the revival of a law by reference, it would seem clear that a statute could not adopt by reference statutory provisions which had been repealed before the adoption, or, if provisions were amended before the enactment of the adopting statute, the provisions as they were before amendment. And yet in People v. Glassco, 203 Ill. 353 (1903): such an adoption was sustained by the Supreme Court. Sections 24 and 25 of the Farm Drainage Act of 1885 were amended by act approved May 10, 1901. One day later, May 11, 1901 an act was approved which incorporated these sections 24 and 25 by reference. It is quite apparent from the language that the legislature in passing the adopting act intended the reference to the original sections and not to the sections as amended. The court sustains the reference to the original sections but the opinion is devoted to ascertaining the legislative intent and apparently the power of the legislature in this respect is not considered. This case, has, however been cited for the proposition that the "the provisions of a repealed act may be adopted, (by reference) with the same effect as if it was in force." See Section 405. Lewis' Sutherland Statutory Construction.

the whole or a portion of another statute, means the law as existing at the time of adoption and does not include subsequent additions or modifications of the statute so adopted, unless it does so by express or strongly implied intent. This rule seems to be strictly adhered to, where the prior act is particularly referred to in the adopting statute by its title. Where, however, the adopting statute makes no reference to any particular act by its title or otherwise, but refers to the general law regulating the subject in hand, the reference will be regarded as including, not only the law in force at the date of the adopting act, but also the law in force when action is taken, or proceedings are resorted to."[27]

If it is desired to include future amendments to the adopted statute, the reference must be general or some words must be added to the particular reference to disclose that intent. Although there is no Illinois decision on this point, it has been held generally elsewhere that the repeal of a statute adopted by a particular reference would not affect the operation of that statute as a part of the adopting statute.[28] Since a general reference includes all additions and modifications and refers to the law at the time when the rule is invoked, it should follow logically that a repeal of the statutory provisions adopted would repeal them as a part of the adopting statute, but this precise point does not seem to have been passed upon. In the case of adoption by a particular reference with words indicating an intent to include subsequent amendments, it is difficult to say what effect a repeal of the adopted provisions would have. Probably it would not withdraw those provisions from the adopting statute since the reference being to a particular act the additional language would seem to go only to the extent of including subsequent changes but not a repeal.

Legislation by reference has been the subject of some criticism. For one thing, two or more acts dealing with different subjects must be consulted in order to ascertain a legal situation. More than that, frequently the adopted provisions are not wholly applicable to the adopting statute. This may be easily overlooked in drafting the adopting act and then a judicial question is presented as to what extent the provisions are incorporated. If, however, the bill-drafter makes the necessary modifications, the reader must apply the modifications to the adopted provisions and then apply both to the adopting act. There is still another difficulty. If the reference is general, amendments may be made to the adopted provisions without regard to their effect on the adopting statute. If the reference is particular, and amendments are made to the provisions adopted, the result is that the provisions are left in two forms: one, in the original for the purposes of the adopting act; and two, as amended, for the purposes of the statute from which they were adopted. If it should be desired to keep these provisions uniform both in the statute where they occurred and in other

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[27] Culver v. People, 161 Ill. 89 (1896).

[28] Lewis' Sutherland Statutory Construction Sec. 405.

statutes which had adopted them by particular reference, it would be difficult to locate and amend the adopting acts.

On the other hand, there are a number of advantages in legislation by reference. It tends to reduce the bulk of legislation. If every detail concerning elections had to be repeated in connection with every vote, if every act providing a tax levy had to contain the revenue act, the statute book would run to inordinate length. More than that, each act would introduce varying details and minor modifications as to similar provisions that would render the law almost impossible of administration. Within certain bounds, legislation by reference is proper and useful; carried beyond those limits, it can justify all the criticism it has had. The different effects of general and particular references has been suggested together with the advantages and disadvantages of each. Probably less difficulty will be occasioned and fewer unforeseen situations result if the reference is made to the law generally on a particular subject.

Acts expressly amendatory:[29] . . The constitutional provision requires that an amended section or act be set out at length, but it does not require the section or act to be also set forth in its original form before amendment.[30] It is therefore sufficient to provide that "Section 10 of (naming the act) is amended to read as follows," and this form is generally used. In repealing a statute or section of a statute it is not necessary to set out at length the statute or section repealed.[31]

A difficulty presents itself in the case of amendments to acts previously amended and also in the case of amendments to void and repealed statutes. Technically when a section is amended and reenacted "so as to read as follows," the original section is repealed and its existence ended.[32] If the original section is no longer in existence can effect be given to an act purporting to amend the original section rather than the section which has replaced it? The view originally held in Illinois was that such an amendatory act was invalid.[33]

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[29] See Chapter on Forms, subheading Amendatory bills.

[30] People v. Wright, 70 Ill. 388 (1873); City of Marion v. Campbell, 266 Ill. 256 (1915); Manchester v. People, 178 Ill. 285 (1899).

[31] Freitag v. Union Stock Yards, 262 Ill. 551 (1914). See chapter on Forms, subheading Repeal.

[32] "The amendatory act declared that the statute should be amended to read as therein provided, and this operated to repeal the original section and to substitute the amendatory section." Palmer v. City of Danville, 166 Ill. 42 (1897): see also People v. Young, 38 Ill. 490 (1865); L. & N. R. R. Co. v. City of East St. Louis, 134 Ill. 656 (1890).

[33] L. & N. R. R. Co. v. City of East St. Louis, 134 Ill. 656 (1890); Kepley v. People, 123 Ill. 367 (1888).

However, in an early case, School Directors v. School Directors, 73 Ill. 249 (1874): the court sustained an amendatory act of 1865 which purported to amend an act of 1861. The act sought to be amended was an earlier statute, several sections of which were amended in 1861. The court says: "Here we have a law possessing all the requisites of a valid statute, passed by the General Assembly, containing clear requirements capable of being carried into effect in connection with the general school law, and we have no right, simply because there is a mistaken reference to a previous statute to defeat that will." This reasoning of the court shows an inclination to waive technicalities in order to effectuate the legislative intention.

In a later case, however, the court squarely abrogates the former rule and announces the rule to be that "where the amendment is considered as a continuance of so much of the law as is left unchanged in form or substance, or as having taken the place of the original enactment and so incorporated therein, for all purposes, including amendment, a subsequent statute purporting further to amend the original act is to be construed in accordance with the intent of the legislature, as operating on the prior amendment, and effect will be given to it."[34] This is now the customary form of an amendatory act, i. e. to amend the original sections without regard to prior amendments. The reference should be to the original act, naming it, "as amended," as a recognition of prior amendments, although it will be noticed that reference in the amendatory act in the case last mentioned did not contain these words. It is unnecessary and cumbersome, however, to name all of the amendatory acts as is sometimes done. Section 1 of an act to amend section 12 of the Fees and Salaries Act, is as follows:

"Section I. *Be it enacted, etc.:* That section 12 of an Act entitled, 'An Act concerning fees and salaries and to classify the several counties in this state with reference thereto,' approved March 29, 1872, in force July 1, 1872, title as amended by an Act approved March 26, 1874, in force July 1, 1874, as amended by an act approved April 8, 1875, in force July 1, 1875, as amended by an Act approved May 21, 1877, in force July 1, 1877; be, and the same is hereby amended so as to read as follows:"[35]

The courts of the different states have not been in accord in passing upon acts which amended repealed or void statutes. The early view and the one held in Illinois was that laws which were not in existence could not be amended; therefore a repealed act, which had ceased to exist as law, and a void act which legally never existed, were not subject to amendment.[36] The more recent view in many jurisdictions ignores the technical objection to such acts and gives effect, when possible, to the wish of the legislature. There have been but few recent cases in Illinois touching on this question.

The court, quite evidently, does not approve of amendments to repealed or void laws but is willing to go to some length to accomplish the legislative intent. In an early case the court said emphatically, "It is, of course, true that a void law cannot be amended."[37] But in that case the court was able to sustain the amendatory act in question on the ground that the principal act was not void but merely inoperative by reason of the failure of the electors of any county to adopt its provisions within the period designated by the act. However, in a later case the court says, "The rule is . . . that even though an amendatory act purports to amend a repealed statute, if the intent of the legislature is clear and unmistakable this intent must govern, and the statute will be held to be enacted notwithstanding the mistake of reference to a statute theretofore repealed."[38] The rule

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[34] Village of Melrose Park v. Dunnebecke, 210 Ill. 422 (1904).
[35] Laws 1919, p. 560.
[36] See Lewis, Sutherland, Statutory Construction, Sec. 233.
[37] People v. Onahan, 170 Ill. 449 (1897).
[38] People v. Morrell, 234 Ill. 47 (1908); see also Patton v. People, 229 Ill. 512 (1907).

laid down is applied to sustain an amendatory act of 1907 to section 15a of the farm drainage law, that section having been repealed by an act of 1901.

By the same reasoning, it would seem that an unconstitutional law might be amended but apparently this question has not been presented to the court. In one of the cases which consider amendments to repealed laws the court quotes approvingly the following statement: "The decided weight of authority and the better opinion is, that an amendatory act is not invalid, though it purport to amend a statute which had previously been amended or for any reason been held invalid."[39] Probably the only occasion for amending an unconstitutional law would be the removal of the constitutional defect.

Although acts amending void or repealed laws might be given effect by the court, such legislation is to be condemned. Indeed the court has said that they can be sustained only because "the rule for the guidance of the court is to ascertain the intention of the legislature and not their mistakes, either as to law or fact."[40] Amendments to original sections rather than to prior amendments are sustained on a different ground viz. that the prior amendments have merged into and become part of the original act and therefore the subsequent amendment should properly refer to the original act.

Attention should be called to a number of other matters concerning amendatory bills. An amendment of a section "to read as follows" operates as a repeal of the portions of the original section omitted. As to the portion unchanged, in form or substance, the amendatory act is a mere continuation of the original act.[41] Thus the Illinois corporation act of 1872 permitted the consolidation of corporations with certain restrictions, one of which was that "no more than two corporations *now existing* shall be consolidated into one under the provisions hereof." The section containing this provision was amended and re-enacted in 1889 but the words quoted were not changed. It was held that the words "now existing" in the amended section related to 1872 and not to 1889.[42] The amended portion or new matter is effective from the date of the passage of the amendment. An amended statute, however, is construed as regards any action subsequent to the amendment, just as though it had been enacted originally in its amended form.[43]

The General Assembly not infrequently passes two or more bills amending the same section or sections of a prior act. In 1917 two bills were passed amending sections of the Workmen's Compensation Act.[44] The next General Assembly passed three acts amending section 61 of the County Act.[45] Of course, the measure last enacted has the effect of repealing all prior amendments of the

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[39] Patton v. People, 229 Ill. 512 (1907).

[40] Lewis' Sutherland, Statutory Construction, Sec. 233, quoted in Patton v. People, 229 Ill. 512 (1907).

[41] People v. Zito, 237 Ill. 434 (1909).

[42] Barrows v. People's Gas, Light & Coke Co., 75 Fed. 794 (1895).

[43] Holbrook v. Nichol, 36 Ill. 161 (1864).

[44] Laws 1917, pp. 490, 505.

[45] Laws 1919, pp. 370, 381, 392.

same section or sections whether enacted at the same session or by an earlier General Assembly.[46]

Under the Senate and House rules "it is made the duty of any member introducing a bill proposing an amendment to any statute law of this State to underscore the word or words, comprising the proposed amendment, and no bill shall be printed until such word or words are underscored. All parts of bills which are underscored shall be printed in italics". The evident purpose is to acquaint the reader with the changes in the section as proposed. The difficulty is that this expedient goes only half way. Frequently amendments to legislation are accomplished by omission rather than by adding new parts. And if a substitution of new matter for old is made, it is impossible to know exactly the extent of the alteration. Some law-making bodies adopt the further expedient of printing omitted portions with a line drawn through or enclosed in brackets. Substitutions can be shown by printing old matter crossed with a line above the substituted portion which would be italicized. However, the objection can be made that a bill printed in this manner is somewhat more difficult to read.

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[46] The passage of two or more bills at one session amending the same act is apt to cause some difficulties. The later act repeals the earlier only as to the sections which are set out and re-enacted in the second measure. If the first amending act amends sections not contained in the subsequent measure or adds new sections, these sections are not expressly repealed. Thus the House bill amending the workmen's compensation act adds a new section numbered 3½. The senate bill, approved later, makes no mention of section 3½. It, therefore, was not repealed by the Senate bill but became effective July 1 following its passage. But an inspection of section 3½ shows that it is not in harmony with the Senate bill that became law. In its first sentence it says, "If the plaintiff in any action mentioned in section 3 shall . . . allege that the employer has filed notice of his election not to provide and pay compensation according to the workmen's compensation act . . ." But section 3 as last amended applies the provisions of the act automatically and without election to the employers named in that section. Is section 3½ repealed by implication or can it be given effect as a procedural provision applying to causes of action accrued before section 3, as last amended, became effective?

ESSENTIAL POINTS IN BILL DRAFTING.

Each proposed measure has its own problems and special features. But there are general considerations applicable to bill-drafting which must constantly be borne in mind by the draftsman. The importance of these points warrants a brief mention. If the draftsman, in constructing a legislative measure, has worked with the following points in mind, his bill at least can become an effective law even though imperfect in form.

Is the object of the proposed measure within the power of the General Assembly to enact?

Do the methods by which the object is sought to be accomplished conform to constitutional requirements?

What is the present state of the law on that subject?

Can the desired result be effected by an amendment to some existing act?

What existing laws will be affected by the proposed legislation?

Is the proposed measure limited to one subject and purpose?

Does the title adequately express that subject?

If the bill is amendatory in form, does it correctly refer to the act amended?

Do the sections amended in an amendatory bill work an amendment in effect in other sections not set forth?

Do the amendments made by an amendatory bill, necessitate an amendment to the title of the original act?

Is the enacting clause in proper form?

Does the measure accomplish the legislative purpose?

If the act is amendatory is the new matter in the amended sections underscored as required by the rules of both Houses of the General Assembly?

APPENDIX I. FORMS.

A number of forms for titles and various provisions have been collected in this chapter for reference purposes. It is not intended to suggest that the examples given are perfect or incapable of improvement. Some have been taken without change from Illinois statutes. In other cases, the form given is thought to be an improvement.

Reforms in statutory form are necessarily gradual. The bill-drafter is not always free to use the phraseology he thinks best adapted to the purpose. Always he must reckon with the power of custom firmly established. This seems particularly true in the case of amendatory bills. There is an established phraseology for the titles and enacting parts of such bills which seems unnecessarily cumbersome. For example, the usual title for a bill which adds sections to a prior act has been: "A Bill for an Act to amend an Act entitled, 'An Act to revise the law in relation to counties,' approved and in force March 31, 1874, as subsequently amended, by adding two new sections, to be known as Sections 162 and 163." It may be worth while to point out in detail some possible changes which simplify this language without weakening its effect.

1. Omit "new;" sections added to a statute are necessarily new.
2. Omit "subsequently"; any amendments must have been subsequent to its passage.
3. In place of the words, "by adding two sections, to be known as Sections 162 and 163" insert, "by adding Sections 162 and 163." The last expression means exactly the same as the first.
4. Since the addition of sections necessarily amends an act, instead of the words "An act to amend an Act entitled 'an Act etc.,' by adding etc.," say "An Act to add Sections 162 and 163 to an Act entitled, 'An Act etc.' "
5. Omit the words "an Act entitled." Refer to the act amended directly by its title in place of making the reference to an act "entitled 'An Act etc.' " The title with this phrase omitted becomes: "A bill for an Act to add Sections 162 and 163 to 'An Act to revise the law in relation to counties,' approved and in force March 31, 1874, as amended."

Some of the suggested changes may seem radical departures from the usual phraseology and for that reason in the forms for amendatory bills, alternative forms are occasionally given to accomplish the same result. The examples are, after all, merely suggestive, to be improved rather than to be followed. Uniformity is undoubtedly desirable but it should not be a uniformity of useless and awkward phraseology.

Titles to Independent Bills.

A BILL

For an Act to establish the Illinois State Police.

A BILL

For an Act to regulate the exhibition of motion pictures.

A BILL

For an Act in relation to corporations for pecuniary profit.

A BILL

For an Act to revise the law in relation to deadly weapons.

Amendatory Bills.

1. *Bill to amend sections,—two forms.*

A BILL

For an Act to amend Sections 160 and 161 of "An Act to revise the law in relation to counties," approved and in force March 31, 1874, as amended.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Sections 160 and 161 of "An Act to revise the law in relation to counties," approved and in force March 31, 1874, as amended, are amended to read as follows:

Sec. 160. No territory transferred . . .

Sec. 161. The county board . . .

A BILL

For an Act to amend Sections 160 and 161 of an Act entitled[47] "An Act to revise the law in relation to counties," approved and in force March 31, 1874, as amended.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Sections 160 and 161 of an Act entitled "An Act to revise the law in relation to counties," approved and in force March 31, 1874, as amended, are amended to read as follows:

Sec. 160. No territory transferred . . .

Sec. 161. The county board . . .

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[47] The second form retains the phrase "An Act Entitled." These words have been omitted in the other forms for amendatory bills.

2. *Bill to add sections,—two forms.*

A BILL

For an Act to add Sections 7 and 8 to the Game and Fish Code of Illinois,[48] approved June 24, 1919, in force July 1, 1919.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Sections 7 and 8 are added to the Game and Fish Code of Illinois, approved June 24, 1919, in force July 1, 1919, these sections to read as follows:

Sec. 7. It shall be the duty . . .

Sec. 8. Whoever, hunts, takes or destroys . . .

A BILL

For an Act to amend the Game and Fish Code of Illinois, approved June 24, 1919, in force July 1, 1919 by adding Sections 7 and 8 thereto.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assemby:* The Game and Fish Code of Illinois, approved June 24, 1919, in force July 1, 1919, is amended by adding thereto Sections 7 and 8, to read as follows:

Sec. 7. It shall be the duty . . .

Sec. 8. Whoever hunts, takes or destroys . . .

3. *Bill to repeal sections.*

A BILL

For an Act to repeal Sections 168, 169 and 170 of "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, in force July 1, 1913, as amended.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Sections 168, 169 and 170 of "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, in force July 1, 1913, as amended, are repealed.

4. *Bill to amend sections and add sections.*

A BILL

For an Act to amend Sections 161 and 162 of "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, in force July 1, 1913, as amended, and to add Section 183 thereto.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Sections 161 and 162 of "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, in force July 1, 1913, as amended, are amended, and Section 182 is added thereto, the amended and additional sections to read as follows:

Sec. 161. The commissioner of highways . . .

Sec. 162. In all counties . . .

Sec. 183. No contract so made . . . .

[48] In this instance, the act amended provides a short title by which it may be cited and this short title is used for the reference.

5. *Bill to amend some sections and repeal others.*

A BILL

For an Act to amend Sections 161 and 162, and to repeal Section 183 of "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, in force July 1, 1913, as amended.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Sections 161 and 162 of "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, in force July 1, 1913, as amended, are amended to read as follows:

Sec. 161. The Commissioner of highways . . .

Sec. 162. In all counties . . .

Section 2. Section 183 of said Act is repealed.

6. *Bill to amend sections and title.*[49]

A BILL

For an Act to amend Sections 2 and 3 and the title of "An Act to revise the law in relation to roads and bridges, approved June 27, 1913, in force July 1, 1913, as amended.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Sections 2 and 3 of "An Act to revise the law in relation to roads and bridges," approved June 27, 1913 in force July 1, 1913, as amended, are amended to read as follows:

Sec. 2. When any part . . .

Sec. 3. If it shall appear . . .

Section 2. The title of said Act is amended to read as follows: "An Act in relation to roads and bridges."

7. *Bill to amend sections and title and add and repeal sections.*

A BILL

For an Act to amend Sections 6 and 7 and the title of "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, in force July 1, 1913, as amended, to add Sections 8 and 9 thereto, and to repeal Sections 3 and 4 thereof.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Sections 6 and 7 of "An Act to revise the law in relation to roads and bridges," approved June 27, 1913, in force July 1, 1913, as amended, are amended and Sections 8

[49] When an amendatory act amends the title of the original act, it probably would be preferable to refer to the original act by its title rather than a short title.

and 9, are added thereto, the amended and additional sections to read as follows:

Sec. 6. The terms of the . . .
Sec. 7. On the first Monday. . . .
Sec. 8. The nomination . . .
Sec. 9. The additional judges . . .
Section 2. The title of said Act is amended to read as follows: "An Act in relation to roads and bridges."
Section 3. Sections 3 and 4 of said Act are repealed.

Amendments to bill after introduction.

1. AMENDMENT TO PRINTED SENATE BILL NO. 351.

Amendment No. 1. Amend printed Senate Bill No. 351,[50] on page 3, section 2, line 51, by striking the words "twenty cents," and inserting in lieu thereof the words "seventy-five cents."

2. AMENDMENTS TO PRINTED SENATE BILL NO. 117 IN HOUSE.

Amendment No. 1. Amend the title of printed Senate Bill No. 117 in House to read as follows:

"A bill for an Act for the relief of Fred H. Gillett and Thomas J. Sheridan, and making appropriations therefor."[51]

Amendment No. 2. Amend printed Senate Bill No. 117 in House by adding thereto Sections 3 and 4, to read as follows:

"Sec. 3. The sum of $2,000 is appropriated . . .
Sec. 4. The Auditor of Public Accounts . . ."

Conference Report.

REPORT OF COMMITTEE OF CONFERENCE ON HOUSE BILL NO. 754.
JUNE 19, 1919.

To the Honorable:

The President of the Senate, and
The Speaker of the House of Representatives.

We, the undersigned committee of conference, appointed to consider the differences between the two Houses in relation to the Senate Amendments to House Bill No. 754, "A bill for an Act, etc."

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[50] It is customary for each amendment to name the bill amended even though the amendments are given a general title which indicates the bill amended. When there are many amendments to one bill, this repitition becomes tiresome. A more desirable form of amendment would be:

"On page 3, section 2, line 51, strike the words 'twenty cents,' and insert in lieu thereof the words 'seventy-five cents.'"

The amendments recommended in the conference report are in this second form.

[51] If the change made in the title is small, the amendment may strike, insert or add words in place of setting out in full the amended title. The same thing is true of amendments to the body of a bill. If there are a number of amendments in a comparatively short section, the most convenient form of amendment may be to set out the amended section in full. Several amendments can sometimes be handled together by striking a line or several lines and inserting new matter. In each instance the form of amendment selected must be determined from a consideration of the particular case. The bill-drafter should keep the amendments as short and simple as possible and at the same time make it easy for a person comparing the bill and its amendments to discover the changes that have been made.

beg leave to report that we recommend the following as the action to be taken by the Senate and the House of Representatives, respectively:

We recommend that the Senate recede from Senate Amendments Nos. 1, 5, etc.

We further recommend that the House of Representatives concur with the Senate in Senate Amendments Nos. 2, 3, 4, etc.

We further recommend that printed House Bill No. 754 in Senate be amended as follows:

First: On page 2, section 1, paragraph 4, line 2, strike out "twenty cents" and insert in lieu thereof "fifty cents."

All of which is respectfully submitted.

Dated this 19th day of June, 1919.

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Committee on the part of the Senate.	Committee on the part of the House of Representatives.

Provisions authorizing hearings, compelling obedience to subpoenas and extending immunity.

Sec. — The Department may conduct investigations and hearings, subpoena witnesses, issue subpoenas to require the production of books, papers, records and documents which may be needed as evidence of any matter under inquiry, and may administer oaths and affirmations. In the conduct of any investigation or hearing, the Department shall not be bound by the technical rules of evidence, and no informality in the proceeding or in the manner of taking testimony shall invalidate the decision or order of the Department. Service of subpoenas shall be by any sheriff, constable or other person of full age.

Sec. — If any person who has been properly served, refuses or neglects to appear and testify or to produce relevant books, papers, records or documents, the Department may petition the circuit court of the county in which the hearing is being held for an order requiring the witness to attend and testify or produce the documentary evidence. The circuit court shall hear the petition and, if it appears to the court that the witness should testify or should produce the documentary evidence may enter an order requiring the witness to obey the subpoena. The court may compel obedience to its order by attachment proceedings, as for contempt of court.

Sec. — No person shall be excused from giving evidence in any investigation or hearing ordered by the Department, upon the ground that the evidence may tend to incriminate him or subject him to a penalty. But no person shall be prosecuted or subjected to a penalty for any transaction or matter concerning which he has given evidence

before the Department. This immunity however, shall extend only to a natural person, who in obedience to a subpoena, gives testimony under oath or produces documentary evidence under oath.

Sec. — Whoever wilfully testifies falsely to any material fact at any hearing or investigation is guilty of perjury and shall be punished accordingly.

Referendum provision.

Sec. — Subject to the provisions of Sections — of this act, any town may levy an annual tax of not to exceed three mills on the dollar for the purpose of etc. This tax shall be levied and collected in the same manner as other general taxes.

Sec. — Upon the filing with the town clerk of any town of a petition containing the names of not less than fifty legal voters of the town praying that the question of levying this tax be submitted to the voters, the question shall be submitted at the next regular town election, if there is one more than twenty but less than ninety days after the filing of the petition. If there is no regular town election within that period, a special election shall be called not less than thirty nor more than sixty days after the petition has been filed.

Sec. — The ballots for use in this election shall be in substantially the following form.

For a tax levy of not more than three mills on the dollar for the purpose of etc.	
Against a tax levy of not more than three mills on the dollar for the purpose of etc.	

If a majority of those voting on the question of levying a tax for the purpose of etc., vote in favor thereof, an annual tax of not to exceed three mills on the dollar shall be levied and collected for that purpose.

Penal provision.

Sec. — Whoever steals any motor vehicle of a value greater than fifteen dollars, or buys, receives or conceals any such motor vehicle knowing that it has been stolen and with the intent to defraud the owner, is guilty of a felony and shall be fined in any sum not exceeding five hundred dollars and imprisoned not less than two years nor more than fifteen years.

Provisions containing prohibitions or imposing duties with penalties grouped in a later section.

Sec. — Every owner of a vehicle of the first division shall, within ten days after acquiring it, file in the office, . . .

Sec. — No motor vehicle or motor bicycle shall be operated . . .

Sec. — No person shall drive a motor vehicle or motor bicycle upon a public highway in a race.

Sec. — Whoever violates the provisions of this act is guilty of a misdemeanor and shall be fined in a sum not to exceed the amounts set forth:

For a violation of Sections 4, 6, 7 or 8, one hundred dollars,

For a violation of Section 5, twenty-five dollars.

Sec. — In case of a continuing violation of any of the provisions of this act, each day's continuance thereof is a separate offense.

Appropriation provisions.

Sec. — The sum of $50,000.00 is appropriated to the Department of Public Works and Buildings to carry out the provisions of this act.

Sec. — This appropriation is subject to the provisions of "An Act in relation to State Finance," approved June 10, 1919, in force July 1, 1919.

Take effect clause.

This Act shall take effect on the first day of January, 1922.

Emergency clause.

Because of an emergency, this Act shall take effect upon its passage.

Repeal.

"An Act to secure the enforcement of the law for the prevention of cruelty to animals," approved May 25, 1877, in force July 1, 1877, as amended, is repealed.

APPENDIX II. BIBLIOGRAPHY.

A Legislative Handbook, Ashton R. Williard; the most useful discussion of American legislative practice, now unfortunately out of print.

Statute Law Making, Chester Lloyd Jones; largely a restatement of Williard and Coode.

Legislative Methods and Forms and *Mechanics of Law Making,* Sir Courtenay Ilbert; two works which constitute the most authoritative statement of modern English legislative methods. Of distinct value in this country on many points.

Practical Legislation, Lord Henry Thring, Parliamentary Counsel preceding Ilbert; discussion of composition and language of acts of Parliament.

Theory of Legislation, Jeremy Bentham; of interest chiefly as the first effort along scientific lines to formulate principles for legislative drafting.

On Legislative Expression, George Coode; early exposition on the phraseology of English statutes.

Statute Law, William Feilden Craies; largely a discussion on the interpretation of statutes with some remarks about statute making.

Statutory Construction, J. G. Sutherland, second edition by John Lewis; the standard work on construction of statutes.

Constitutional Limitations, Thomas M. Cooley; the standard work on the extent of the power of American legislatures.

Reports of the Special Committee on Legislative Drafting. This committee of the American Bar Association has been engaged for a number of years in the collection of data concerning style, language, arrangement, operation, methods of regulation, remedial and enforcing provisions and administration. A topical plan for a manual for legislative drafting was prepared some time ago and recently revised. This plan was an outline with chapter headings. Several of these chapters were written, the subjects being, "Administrative Regulations", "Penalties", and "Provisions for Licensing and Certification". The committee has discontinued the collection of data and is preparing a final report on the material already collected.

Statute Law Making in Iowa. This is the most comprehensive of a number of State publications, a list of which follows. These are mainly of value in the particular State where compiled.

California,

Legislative Manual and Form Book.
Hints on Drawing Legislative Bills.

Indiana,

Legislative Bill Drafting.

Hints on Bill Drafting.

Iowa,

Scientific Law-making.

Maryland,

Scientific Assistance in Law Making.

North Dakota,

Statute Law Making with Suggestions to Draftsmen.

South Dakota,

Titles of Laws.

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